Vol. III

# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 207

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

TEX-PENN OIL COMPANY

No. 208

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

M. L. BENEDUM

No. 209

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

F. B. PARRIOTT

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

**PETITION FOR CERTIORARI FILED JULY 16, 1936**

**CERTIORARI GRANTED, OCTOBER 12, 1936**

I noted that the Tex-Penn figures from January to July constituted a very substantial reduction or falling off; that the major production in the Desdemona Field during July came from wells generally located in the area marked in red, and that the pipe line runs from the Desdemona Field from January to July indicated a steady increase each month.

In the opinion of the witness, the record of drilling twenty-eight wells on the Tex-Penn properties by Transcontinental Oil Company after August 1, 1919, thirteen dry holes, four gas wells, and eleven oil producers— did not condemn the property as a block, it condemned large portions of it; that of these twenty-eight wells, thirteen dry holes did not condemn the property as a whole, although it did condemn quite a bit of it; that there still remained the possibility of offsetting these dry holes and getting big wells and that had four or five more wells been drilled on each 160-acre block of the Tex-Penn leases they might have gotten some big wells even on the blocks where there were dry holes or where there were gas wells. My knowledge of the field, I think, bears me out in that observation. I could not determine as of the date of completion of these additional dry holes, gas wells and producing wells, how much such drilling results would have affected by $14,000,000 valuation of the leases; it would take considerable time to check the entire field, and I could not do it, except by guess: I think that the drilling of five of the twenty-eight wells with initials of 100 barrels or less would decrease the valuation, and that the drilling program as a whole would decrease the value of the Tex-Penn leases. I would not undertake to say how much, that would be just a guess. I could not say that I had anticipated any further decline in the production of Tex-Penn leases below that obtaining August 1; I considered future production would remain at practically the same level; the wells

were then down to a pretty steady production. As to whether subsequent facts and events would affirm or disaffirm my valuation of $14,000,000 as of August 1, 1919, I have already testified that the value went down. I stated that very positively. The drilling of the twenty-eight additional wells did not have but very little effect and would not change my opinion, because I figured that another set of six wells, if they produced as much as these six already had up to August 1, that such result would bear me out on my estimate that the leases were very productive.

The trend of production during June and July, 1919, was north, northwest, northeast of the Duke discovery well; there were some dry holes drilled along the westerly line of the Tex-Penn block and dry holes, gas wells, small oil producers and large oil producers offsetting the Lewis wells to the north; to the south of the properties there were three or four small oil wells drilled in. East of the property there was no development "profitable or unprofitable." I did not know of any profitable wells on the east side of the Tex-Penn block nor what the leasing situation or activity was as of August 1 in that area. I did not, of my own knowledge, know of any leasing transactions in the area east of the Tex-Penn block nor the area west of the Tex-Penn block.

Due to difference in price on the acreage in Block 1 and Block 2 I had put a price of $10,000 per acre on No. 1 and $5,000 per acre on No. 2; I applied all of my twelve basic reasons, but in an entirely different way, in studying the two blocks; the presence or absence of dry holes would account for the 100 per cent. difference in the two acreages—it is the presence or absence of dry holes that lends value to any oil property. The absence of dry holes on producing leases lends value to any oil property anywhere.

No major oil company within sixty days preceding August 1, 1919, had asked me to accomplish the sale of the

Tex-Penn properties. I considered a large oil company's valuation of the properties would be approximately the same as my own. It is my opinion that the block could have been divided up and sold to small operators, lease brokers, etc., and would have yielded about the same average price. I do not know if a large operator, desiring to purchase the property on August 1, would have approached the valuation in the same fashion as I did. If a lease broker were asked to fix a price on the property his approach would not have been the same—merely an inquiry "how much do you want for it"—and that after a figure had been fixed and a deal completed that figure would have represented the fair market value of the block, according to my definition of fair market value. According to the way I use the terms, there is not any difference between fair market value and market price.

I stated that I knew in a few instances of my personal knowledge that there were duplications appearing in the list of transactions shown in Respondent's Exhibit AX. As to the great mass of the acreage I could not say. The probabilities are there were a number. The acreage was passing from hand to hand very rapidly at the time as indicated by the number of transactions.

Mr. Angell: I move to strike out Respondent's Exhibit AX on the ground that it does not reflect the situation on account of the duplications that the witness has testified to in it; that the transactions which it purports to cover have not been proven comparable in any sense whatever to the acreage covered by the Tex-Penn leases.

Mr. Fullerton: That exhibit, if the Board please, shows transactions which occurred within the 5-mile radius in Eastland, Erath and Comanche Counties, as shown by the accounting records. No considerations are shown on that exhibit. The purpose of

the exhibit was to show the activity in trading and for the life of me, I cannot see why activity in trading is not just as well shown by the fact that one acreage changes hands twice as by the fact that 2 acres changed hands once.

The Presiding Member: I will deny the motion to strike.

Mr. Angell: Exception.

The Presiding Member: Note the exception.

Mr. Angell: I move to strike out the entire testimony of the witness Powers on the ground that from his own statement he is wholly unqualified to express an opinion on the value of thirty-four to thirty-five hundred acres.

The Presiding Member: The motion will be denied.

Mr. Angell: Exception.

The Presiding Member: Note the exception.

*Redirect examination.*

I devoted my time exclusively to the oil industry after August 1, 1919, for a period of about four years. I continued buying and selling leases and in drilling wells—in Desdemona until 1920 and part of 1921. After that I was in the Breckenridge Field which was classed by some as an extension of the Ranger Field.

Q. Now, counsel quizzed you regarding the factors that you used and the relative weight which you gave to those factors. Were those or were not those the same factors which you used in valuing acreage which you purchased and sold in the Desdemona Field in the first half of 1919?

Mr. Angell: I object, your Honor. I think that is purely a hypothetical inquiry.

The Presiding Member: I will overrule the objection.

A. I would say they were in the main, but not entirely so, because the leases in each field I testified did not have any production on them. That feature did not come in at all.

Of my fifty transactions in the Desdemona Field, particularly the forty-three concerning which I gave no date or detail, a number of these were before the Duke well came in and a large number were after August 1, and the same is also true as to the remainder of the fifty transactions as to which I asserted I had personal knowledge.

I believe the big companies had an advantage over the small buyers and the development of a block such as the Tex-Penn acreage in that they would not be forced to engage in such an intensive drilling campaign, and could more properly space their wells without being bothered about all the offsets that a small leaseholder might have. I am not capable of answering as to the comparative cost of drilling between the big companies and the smaller man. I think, as between the larger operator and smaller operator, that the latter bought with the expectation of the larger profit; that it was the idea of the small operator usually to drill one or two wells and get his profit in a hurry; the big operators bought with the idea of staying and continued production and not such large profits.

The small operators buying in small blocks would be willing to pay higher prices, would drill more wells necessarily than the big operators on the same lease or on the same amount of acreage.

*Recross-examination.*

Assuming that the production (33,000 barrels) obtained in July from the Tex-Penn leases did remain constant it would take approximately fourteen years to pay out on my valuation at a sustained price of $2.25 per barrel, but I also took into consideration that there would be more wells on the lease, and that the operator would not just produce

the existing wells and stop; that while additional wells were drilled on these leases I did not consider that they had been complete failures.

I believe a 100-barrel well would, if properly cared for, pay out in the Desdemona Field.

Q. Would your opinion be modified if you were advised that the 100-barrel wells drilled in the Transcontinental Field by no means paid themselves out? A. I think there were a great many exceptions. Wells even larger than 100-barrel wells did not pay out. I know that of my own knowledge.

It is hard to figure how much of the $14,000,000 value I attributed to the wells already in existence on the Duke-Knoles leases on August 1, and how much to the wells which were to be drilled. I said this, that up to July 1 these six wells that were drilled had already produced as much as could be expected of them to bear their burden of the cost, provided the rest of the leases were reasonably good. I did not mean by that that you would get a Knoles well on every lease.

(In a later session of the hearing the petitioner presented the following motions to strike the testimony of witnesses Spoonts, Simon, Powers and Gieske:)

Mr. Angell: If your Honor please, I move to strike that part of the testimony of the witnesses Spoonts,* Simon and Powers, wherein those three witnesses undertook to point to certain isolated *transactions, involving from 1* to 10 acres, and from such isolated transactions draw conclusions that the prices for which the isolated transactions fixed the market price of larger blocks of 600 acres or more, on the ground that those witnesses are not qualified to express such opinions; and that the comparable nature of the isolated transactions in large blocks had not been shown aliunde—

*The narrative of the testimony of witness Spoonts appears next following the proceedings on the above and certain related motions. See pages 1349 to 1376.

The Presiding Member: Well, now, Mr. Angell, as I recall the testimony of those witnesses, it was along these lines: They fixed the value of the Tex-Penn properties, and then they said that, in reaching their values, they took into consideration certain sales, among other things. Well, now, if I understand your present motion——

Mr. Angell: I have no objection to that testimony. I am not moving to strike that testimony at that point.

The Presiding Member: If I may continue, if I understand your present motion, it is to strike the testimony that they gave in support of that opinion.

Mr. Angell: No, your Honor, it is not quite that. These three witnesses gave opinions as to the value of the Tex-Penn properties, and they referred to these various transactions in support of their opinion, but they went further than that: Then they said that, in their opinion, the price paid for these isolated transactions determined the market price for larger blocks of 600, 700 or 800 acres, on the ground that, in their opinion, the properties and prices were comparable.

That, specifically, was the testimony of the witness Powers. You will recall that he had two transactions between the Desdemona town site and the county line, and I think he said that the consideration was something like ten or twelve thousand dollars for those two isolated transactions.

Then he proceeded to draw a red line around about 600 or 700 acres and then testified that the prices of the two isolated transactions in that plot determined the market for the entire area within the red circle.

The Presiding Member: Well, we did not receive that evidence, did we?

Mr. Angell: Yes, your Honor.

The Presiding Member: Did we?

Mr. Fullerton: I do not understand it quite that way. I do not understand the theory of Mr. Powers' testimony quite that way.

The system which he used was to determine, from his knowledge, not only of the sales to which he testified that he had personal knowledge, but sales in the whole market, and he testified that he was familiar with those sales; that certain tracts would have been sold for the prices which he set upon them; and then he said that he believed that the tract as a whole would be worth more than a tract cut up in parcels; that the whole tract if cut up in parcels could have been sold at these prices on any day.

I do not understand from his testimony—I do not believe the Court received the testimony that the isolated sales within the area which he surrounded by the red circle were comparable to the Tex-Penn properties in size.

The Presiding Member: Well, it is my recollection that you offered some testimony on the two small tracts north of this property, and then the red line was drawn around quite an acreage, and you attempted to prove that this block of acreage was similar to the Tex-Penn acreage; and we ruled that that was simply bringing us to the value of this tract, with the idea of seeing whether that tract north of this tract was like the Duke-Knoles property, and we said it would not be received, and it was on your objection——

Mr. Angell: No, I think not, your Honor, that particular part of Mr. Powers' testimony.

My recollection is quite clear that he constructed this area surrounded by red, and then said that that area was comparable with Duke-Knoles No. 1, which was approximately the same area in acreage; and it is as to testimony of that variety that my motion to strike is directed.

Of course if I am wrong this will do no harm in granting the motion to strike, because it is already out.

The Presiding Member: I suppose the proper way to do it, when you want to strike testimony, is to call attention to that part which you want to strike. I do not believe I can rule on such a general statement as you have made.

Mr. Fullerton: The fact is, though, I believe, that Mr. Powers did say that one block of acreage was comparable to another block of acreage in the Tex-Penn leases, although I believe that was without objection.

Mr. Angell: Yes, it was without objection.

Mr. Fullerton: They objected at a later time, when we offered to prove that another block was equal to group 2. That is my best memory of the testimony.

Mr. Angell: It is my recollection, your Honor, when we were discussing group 1, Mr. Powers' group 1 of the Tex-Penn block, he did refer to two isolated transactions between the town site and Duke-Knoles, drawing a red circle and saying that the price was applicable to the entire area in the red circle, and then compared the red circled tract with his group No. 1. That testimony came in without objection at that time.

Later, when we were discussing group No. 2, objection was made to the use of that identical method, and Mr. Fullerton withdrew his question.

Perhaps it might be well if we may have time to point out the specific testimony and renew our motion at that point.

The Presiding Member: Now, your motion, at this time, would go to the fact that there was not evidence offered that this tract within the circle was comparable to the Duke-Knoles property?

Mr. Angell: Yes; and furthermore——

The Presiding Member: But it was testified by the witness that it was comparable?

Mr. Angell: The witness said it was comparable.

The Presiding Member: Well, now, does not that come too late in a motion to strike? It might be objected to, in the first place, when he was testifying, but he made no point of it; and does it not come too late, at this time, to strike it?

Mr. Angell: I should not think so.

The Presiding Member: I should think it would go to the witness' qualification.

Mr. Angell: If the witness is not qualified to express an opinion, I take it a motion to strike may be entertained at any point of the testimony.

The Presiding Member: Yes; but your motion to strike is not a motion to strike the entire testimony, on the ground that it is not qualified; but you ask that there be stricken the statement that the property within the circle was comparable to the Duke-Knoles property.

Mr. Angell: On the ground of his lack of qualifications to express an opinion on that point that goes partially to his qualification, a motion directed to his qualifications to express an opinion on that particular phase of the case.

Mr. Fullerton: He testified, if my memory is correct, that he believed that that property encircled in red and group No. 1 were within the trend of the development, and gave a reason or the reason for his comparison; and I think his testimony on that point was as a business man and an operator in leases, and was justified and corroborated by the opinions of the geologists who succeeded him.

The Presiding Member: Well, in any event, I do not think I can rule on it in the manner in which the motion is made; and in order to clear the record at this time I will deny the motion. You may have the right, if you think proper, to call up some specific part of the testimony that you want stricken.

Later the following proceedings were had:

Mr. Angell: Now, I wish to ask the Board to entertain two motions to strike. While these two motions to strike I am bringing on at the same time they are, I think, of such a character that they should be considered separately and seriatim.

The first of the two motions is to strike the testimony of the witnesses Powers* and Simon† on the score that neither witness has been shown to be qualified to express an opinion as to the value of the Tex-Penn acreage.

The second motion is to move to strike certain specific parts of the testimony of Powers where he without any proof of comparability in the record undertakes in as many words, in response to respondent's inquiry, to compare certain isolated transactions with the Tex-Penn leases or with groups of the Tex-Penn leases. * * *

The first motion is to strike the testimony in toto of witness Powers and witness Simon on the score that neither have been shown to have been qualified to express an opinion of value on the Tex-Penn leases. Mr. Powers was a local school teacher in Desdemona. He had grown up in the community. He no doubt was familiar with the vicinity. He had become a bank director in an upshoot bank that occurred in the period in Desdemona when the field was first opened. He testified that he was personally involved in some fifty transactions, in buying and selling leases in the field, to which he referred specifically, as I recall it, to seven and on cross-examination he was quite uncertain and vague about the balance. He also testified that he was familiar with fifty other transactions in which he personally was not involved and of those fifty, again, as I recall, he was specific with respect to about six or seven and vague and very indefinite on cross-examination with regard to the balance of them.

* Pages 1280 to 1328, *ante*.
† Pages 1212 to 1251, 1255 to 1277.

The transactions to which he made reference in connection with qualifications and expressions of opinion on the value were of small isolated transactions, inconsequential acreage, scattered all through this general Desdemona area. That was the background of his qualifications. He disclaimed being a geologist. He disclaimed being a producer of oil except on the one occasion when in 1915 he and his friends drilled a well to a depth of some 1500 feet and abandoned it because the money gave out. He was asked to value some 3500 acres and in response to the question put to him he affixed a value of some $14,000,000 to that large acreage and when he came to the question of his reasons in support of the valuation his reasons are significant in view of his lack of qualifications.

First he said he took into consideration the ready market for leases on August 1. No doubt he was familiar with that particular feature. Second, he took comparable sales in the territory and as the record later shows by comparable sales he meant sales of 1 acre, 2 acres, 10 acres and what-not. That question of comparability is involved in the second motion. Third, the great activity in the field; fourth, the high quality of the oil. In view of his qualifications that must have come to him purely by hearsay. Fifth, the block value of the Tex-Penn acreage; sixth, the close in acreage; seventh, the production appearing upon it. He was not a producing man. And eighth—and I quote his own language—"Comparative prices for which I knew leases were selling in other parts of the field." Finally, the gas wells did not condemn the acreage. That reason, I think, we must completely dismiss because of his confession that he was neither a geologist or producing oil man.

Where we have a witness called to value a piece of property of this magnitude, such as the Tex-Penn leases, and where, as shown by his own testimony on the stand, he has never dealt in any acreage at all of the same size,

where he is not a producer, where he is not a geologist, where he is not an engineer, I submit that he is wholly lacking in qualifications.

The same is true of witness Simon, although I think he undertook to assume for himself that he was what might be termed a little larger dealer in leases with a little greater financial backing than Mr. Powers. The question of his qualifications and the question of his ability to testify with respect to the value of a 3500-acre tract in that field rests upon substantially the same qualifications as in the case of the witness Powers. Perhaps before I proceed to the second motion we might get a ruling on the first.

The Presiding Member: I will deny the motion to strike the testimony of these two men, Mr. Simons and Mr. Powers. Your objection will go to the weight to be given to their testimony.

Mr. Angell: Exception.

The Presiding Member: Note the exception.

Mr. Angell: Now, I come to the second motion, the motion to strike certain and specific parts of the testimony of the witness Powers. I base this motion to strike on the ground that the witness Powers, whatever may have been his qualification to express an opinion upon the value of the Tex-Penn leases, was wholly unqualified to express an opinion as to whether or not a piece of property in that field was or was not comparable with the Tex-Penn acreage in whole or in part.

The Presiding Member: Can we have another copy of the testimony?

The Clerk: I have sent for it.

Mr. Angell: There are several pages involved.

Mr. Fullerton: What date?

Mr. Angell: November 3rd and 4th.

The Presiding Member: What page?

Mr. Angell: On page 1854 of the record Mr. Fullerton's question is an inquiry as to the witness Powers' qualifications and it was on that page and the succeeding page, 1855, that the witness Powers testified as to his fifty transactions that he was personally involved in and the fifty transactions in which he was familiar with the circumstances.

The first point on the matter of comparable sales occurred on page 1855. Witness Powers had made reference to a certain 5 acres in the Andre Jones survey. Mr. Davis inquired of Mr. Fullerton: "What is the purpose, may I ask, of this particular incident?" Mr. Fullerton replied: "This is offered as comparable sales." Mr. Davis objected on the ground that comparability has not been shown. Then there was some discussion. The Presiding Member on 1856 stated:

"Suppose you offer proof of comparable property, do you have to show that it is comparable?"

Mr. Fullerton stated: "I think that you do."

"The Presiding Member: Well, have you done it here?"

Then there was some further discussion and on page 1859 the Presiding Member finally terminated the discussion by ruling: "I will sustain the objection at this time." That was the objection of Mr. Davis on the ground the witness had not been properly qualified to state an opinion as to whether the two properties were comparable.

The Presiding Member: Is that what the ruling was or was it that it was not shown the property was comparable?

Mr. Angell: It was not shown that the property was comparable.

The Presiding Member: That is a different thing.

Mr. Angell: It had not been shown that the properties were comparable was the objection, which was sustained at that time.

Mr. Fullerton: Was not that the instance in which there was no objection? I failed to find it as we went through.

Mr. Angell: The objection occurred at the foot of page 1855. Then follows the discussion and on page 1861 the Presiding Member sustained the objection at this time on the ground the comparability of the property had not been shown.

Then we proceeded to the next day's hearing of November 4. Mr. Fullerton proceeded with his examination of the witness and put to him the hypothetical question. On page 1884 Mr. Davis objected on the ground the witness was not qualified to express an opinion, which is, of course, not material to this particular motion to strike. Then on page 1885 the witness stated that in his opinion the property was worth $14,602,000 and proceeded to divide the two Duke-Knoles leases into four groups for the purpose of expressing his opinion. Then we proceed until we come to page 1898. The description of the four groups which Mr. Powers divided the Tex-Penn acreage into was completed and Mr. Fullerton put the following question:

"Now, what valuation per acre did you put on your Group No. 1? A. $10,000 per acre.

"Mr. Davis: One moment. I object to that on the ground the witness has not qualified himself to fix the values."

Just a minute. That is the question of values again. Then with the exception noted on the objection being overruled, this occurs:

"Mr. Fullerton: Now, in fairness to counsel, I will say that I expect the witness, in answering the next question, to state the values of the property which he purchased and sold and which he used as a comparison."

Then your Honor asked a question: "Is this witness offering to testify to sales, for the purpose of reaching a value for this particular land, or is he trying to testify independently that a certain tract is comparable and that that case should be considered? It seems to me there is a great deal of difference in the approach."

Then there was considerable discussion, Mr. Davis taking the position that whether the witness was comparing the two properties or whether he was expressing his opinion and in substantiation of his opinion he was referring to the isolated sales as comparable sales is wholly immaterial and amounted to the same thing.

We come next to page 1901. That follows directly your Honor's suggestion that the question of the reliance which the witness placed upon the isolated transactions in reaching the value is a matter of cross-examination. You will recall that colloquy there. Then your Honor stated in the middle of page 1901: "Then you would go into the question of whether that property, the sale of which is relied on, was comparable?

"Mr. Davis: And if I found, as the result of my examination, that it was not, of course I would have to move to strike out his original statement of $10,000 on the ground that there was no adequate basis.

"The Presiding Member: Yes. And now the only difference here, as I understand it, is that the Government wants to have it in as a part of the answer, as a part of its case.

"Mr. Davis: I submit, if it puts it in as a part of its case, it must lay the foundation for its introduction."

What he had in mind was the proof of comparability before he could rely on comparability. And so forth.

Now, let me call your attention to page 1906, where Mr. Davis made a general objection to any and all statements of the witness that any piece of property was comparable in fact to the Tex-Penn properties. At the bottom of page 1905 witness Powers stated:

"Then the next basis, or my foundation for pricing this acreage through here (indicating) at that price, would go back to the fact I knew what the acreage was selling for, and particularly acreage that I considered of the same value, about the same proximity to drilling wells, that I considered in the trend of the best part of the field, and where the highest prices were being paid, and that were the big prices, that were in line with the prices that I put on this section.

"Q. What other acreage do you know about, which you considered comparable to this?

"Mr. Davis: I object to that. I object to it on the sole ground that he is not qualified to compare properties."

There is an objection not on the ground the witness is not qualified to express an opinion on the value of the Tex-Penn leases, but that he has not been qualified to compare properties.

"The Presiding Member: The objection will be overruled.

"Mr. Davis: Of course, my objection to his qualification I stated at the outset, and that runs all through his testimony."

That is as I have indicated heretofore.

Now, there is an objection taken by Mr. Davis on the sole ground that this particular witness has not been shown to be qualified to compare properties.

The Presiding Member: But, as I recall this testimony, we early reached the conclusion that evidence of other sales could not be received as showing the property was comparable and there was an objection sustained the previous day. Then the Government proceeded on a different tact, namely, they had qualified their witness, and we had passed that. Then they had the witness testify as to the value of the Duke-Knoles leases. The witness then proceeded to give the reasons which prompted him in reaching his conclusion. It seems to me he can give his rea-

sons, whether they are good, bad or indifferent, and that will go to the weight to be given his testimony.

Mr. Angell: That is true, and there is no question——

The Presiding Member: I think this question falls in the same class. I mean this objection.

Mr. Angell: Let us take the question again. The preceding question to which objection is made is this: "What other acreage do you know about, which you considered comparable to this?"

The Presiding Member: Yes, but you cannot pull them out of the text. Just before that he says, "That is my reason for placing that in the $10,000 per acre group." That just follows along.

Mr. Angell: Let us take the response which the witness gave after the objection had been taken: "I have numbered this Block No. 1, and I numbered the acreage in other parts of the field that I thought was comparable acreage; and, for instance, if I took this entire block, I believe it is something over 700 acres—I find, out in this block, not all of it selling at that price, but enough of it selling at that price that I believed the entire block would have."

As you go through the subsequent pages of this testimony, your Honor's position is perfectly clear. I will not stop to point out the page and number unless you desire, but as I gathered it the witness Powers was qualified to express an opinion upon value. Witness Powers, like any real estate broker, for example, could point to certain transactions. He could describe those transactions. He could give the price which was paid in those transactions and that would go to substantiate or not substantiate his opinion on the question of value. But your Honor very particularly pointed out that a witness could not say that certain pieces of property were comparable with another piece of property without the question of comparability having been shown. That is the point I am directing my motion to strike to.

There are five instances in the record where pursuant to the inquiry and in view of the nature of the inquiry made the witness is doing nothing more or less than comparing the properties which have not been shown to be comparable. He has not been shown to be qualified to express an opinion on comparability.

The Presiding Member: But is he giving that testimony in support of his opinion?

Mr. Angell: Perhaps it is a matter of words, your Honor, but I think in the five instances I have selected he is actually comparing two pieces of property and not pointing to one in support of his opinion.

The Presiding Member: Well, I understood the testimony differently, because I thought we settled that in this ruling on November 3, namely, that he was not testifying as to the sale of property until he first showed the property was comparable, but that he could refer to the sales of property in support of his opinion.

Mr. Angell: Now, let me——

The Presiding Member: He is simply giving the basis for it. If that property is not comparable it goes to the weight of his opinion. Maybe that is the way Government counsel understands it, in which event we can get a statement from him that may clarify it quickly.

Mr. Angell: On page 1911 the witness had taken a red pencil and drawn a line around certain acreage lying between the Desdemona town site and the north line of the Tex-Penn property.

"Q. Do you consider the area which you have outlined in red pencil as comparable or not comparable with your Group No. 1 of Tex-Penn Duke-Knoles leases?"

The question was directed to the comparability of the two pieces, not as to whether it supported his opinion.

Member Van Fossan: Is it not a part of the broader scope of his testimony in reference to supporting his opinion as to the value of this acreage and this being just a

breakdown and the modus operandi of his arriving at that opinion?

Mr. Angell: Surely, your Honor, but what I am objecting to is not the use of the breakdown, but the testimony that an isolated sale of 6 or 7 acres is comparable with any one of the groups that he uses upon the matter of the per-acre value.

* * * * * * *

Mr. Angell: * * * I believe I understand the various rulings as made, but there was question after question put to these witnesses predicated on the pure matter of comparing two pieces of property.

Let me point to one other case. Take page 1952, for example, where the witness Powers has come to Group 2:

"Q. Now, do you consider the area in the vicinity of those two pieces of land"—both of which were small isolated transactions up to the north and a little to the west of the Desdemona town site—"concerning which you have just testified, and which are in approximately the center of the S. A. & M. G. survey, as comparable with the area which you have marked, or which you have designated as your Group No. 2 in the Tex-Penn Duke-Knoles leases?

"Mr. Angell: I think that is very leading, your Honor; but, aside from that, I desire to inquire again whether this testimony is to show comparable proof with the Tex-Penn properties, or whether the inquiry is to ask the witness the basis for his opinion.

"Mr. Fullerton: The question is the basis for the witness' opinion, but I think that the witness may be permitted to state, as he stated in regard to this area here outlined in red, that he considered this area comparable to No. 1, and I am asking him whether he considered this area comparable with No. 2.

"Mr. Angell: I think the form of the question would indicate the first purpose rather than the second.

"The Presiding Member: Let us get that clear in the record, that the witness is simply supporting his opinion as to the value of the Duke-Knoles leases, and in connection with that, he is giving as the reason the prices at which certain properties sold."

That is quite all right.

The Presiding Member: That, I understand, follows throughout this testimony.

* * * * * * *

Mr. Angell: On the very next page at the bottom of page 1953 I suggested that Mr. Fullerton reframe his question to indicate that he was not comparing property but was pointing to those properties in substantiation of his value. On the next page we have the question put by Mr. Fullerton, not a question by Mr. Fullerton, but a statement:

"I do not wish to frame the question as counsel asks for it. I do not wish to compare the 5-acre tract there with 200 down here, but I do wish to ask the witness to give his opinion whether a certain area in this district——

"Mr. Angell: Supports his valuation?

"Mr. Fullerton: Whether a certain area in this district is, in his opinion, comparable with the area down here."

Then I said:

"That is what I object to, your Honor. I do not think that is proper, for the purpose of proving——".

Then you (the Presiding Member) commented:

"I should think you would ask the witness what tracts he uses in reaching that conclusion and then he may ask him why he uses them; and if I follow you, you could give the same general value."

The Presiding Member: Then he said:

"I will follow the Board's suggestion."

Mr. Angell: I am afraid not.

The Presiding Member: Mr. Fullerton says:

"I will follow the Board's suggestion."

Mr. Angell: Then he proceeds to depart from it on page 1956. At the middle of page 1956 Mr. Fullerton states:

"I think that the witness may give as his opinion whether the surrounding properties, the sales which he has mentioned, are comparable."

You proceed again to point out that the witness may give in support of his opinion certain sales; that he can refer to them in detail, but that has got to be in support of his opinion.

Member Van Fossan: There is nothing there to object to, is there?

Mr. Angell: I am only trying to bring out that running——

Member Van Fossan: All you are bringing out is that Mr. Fullerton was not convinced by the ruling of the Board.

Mr. Angell: Yes, and that he did not follow the ruling your Honor suggested.

Member Van Fossan: It is apparent on the record that that is so, but the Presiding Member preserved his attitude throughout the testimony.

Mr. Angell: He did, your Honor.

Member Van Fossan: So there is no basis either for your motion——

Mr. Angell: The basis for my motion to strike is that there is testimony in this record in spite of what his Honor, Mr. Arundell, said where the witness specifically compares two pieces of property without being qualified, as I understand the record.

Member Van Fossan: You would have to pick it out of the context in order to support your motion though.

Mr. Angell: I think not. If your Honors will take any and all of the testimony that appears in this record, not as indicating that in the witness' opinion the properties were comparable, but simply as references by the witness to certain pieces of property in support of his opinion, I am quite content. My motion is directed primarily to clearing up any possible ambiguity on that score. I think in view of at least five questions and answers the testimony as it stands in the record and in view of its context is nothing more than testimony by virtue of which the witness compares two pieces of property when those two pieces of property have not been shown to be comparable.

Member Van Fossan: In each one of these five instances, if I remember correctly, there was a ruling by the Board directly in line with your contention.

Mr. Angell: No, your Honor. That testimony is in. Perhaps the most glaring illustration of that and of what I am trying to bring out is this: Witness Powers considered three groups of transactions which occurred in the Funderberger survey and ran down here toward the county line. The first was in the northern part of the Funderberger survey. The second was in the town site area—half-acre lots and what-nots. The third was down here just east of the cemetery. There were three little groups of transactions which he circled in green, as I recall, on his map. Then in response to counsel's suggestion, the witness took a red pencil and drew a line around that area in that fashion and he testified in response to an inquiry that in his opinion the price paid for these three groups of acreages indicated the value of this larger tract around which he had drawn a red circle. Now, that is nothing more than expanding or inflating his small groups to a 600-acre tract. Then he proceeded to say in no uncertain terms that in relation to the value of the Tex-Penn properties this acreage, the 600 acres here (in-

dicating on the map), was comparable with the Group 1 acreage of his in the Tex-Penn leases. Now, that is straight comparable testimony, as I see it. I think, your Honor—

Member Van Fossan: I think it was in support of his opinion, though.

Mr. Angell: Your Honors recollect when the witness came to Group 2 he had certain transactions up here and one over here and again he was about to try to draw a red line in some fashion around these isolated transactions for the purpose of presumably expanding these transactions by a process of inflation to an acreage comparable with his Group 2 acreage in the Tex-Penn oil properties. You will recall your Honor pointed out that that was physically impossible and Mr. Fullerton did not press the point. But this testimony with respect to that 600-acre tract in there circled in red stands in the record.

The Presiding Member: Could I ask Mr. Fullerton what his ideas are of this testimony?

Mr. Fullerton: The theory on which respondent proceeded, as you will recall, was to offer fact testimony of these sales. The Board ruled that those values could not go in until the areas were shown to be comparable. Then having finished the qualification of the witness we questioned him concerning his opinion of value, and after he had stated his opinion we asked him what he used by way of factors and reasoning to arrive at that conclusion. All of the rest of the witness' testimony on direct examination was the reasons for his opinion. I do not believe that the sales which he mentioned in those reasons was fact testimony: that is, it was not testimony of the fact. He merely told why he did it and how he arrived at these particular conclusions to test that matter as to whether or not it was a fact. I believe that subsequent witnesses could not have used those particular sales or those reasons—I mean those particular sales as facts on which to

base his testimony. In other words, we believe that if the witness thought that a certain area in another portion of the field was comparable with a certain area in the Tex-Penn, and it was not comparable, that the Board is the judge of that and it goes to the weight of his testimony.

The Presiding Member: You are clear that the testimony of Powers as to these sales was simply in support of his opinion evidence?

Mr. Fullerton: Yes, sir.

The Presiding Member: Now, that is my understanding of it.

Mr. Angell: Very well. It comes to this then: Mr. Powers gives his opinion of the value of the Tex-Penn properties and in substantiation of that he expresses his opinion that other properties with the same price per acre are comparable acres. That is what Mr. Powers' testimony comes down to.

The Presiding Member: You tried to develop that or did develop it, but he said that was not the only factor. You will recall that.

Mr. Angell: He said that.

The Presiding Member: You made a motion to strike his testimony at the time, as I recall it.

Mr. Angell: I did.

The Presiding Member: For that very reason. We went over this whole matter. My colleague said that I made the same comment then I am making now. It does not seem to me to serve any purpose to go any further.

Mr. Angell: I want to submit the motion, because there is sufficient ambiguity in the record to justify it being clear and this motion will focus the matter. As I understand it, any and all testimony which Mr. Powers may have given is testimony simply in support of his valuation for what weight it may have and that there is no testimony in the record that any particular pieces of

property, wherever they may lie in the field, are comparable to any other pieces of property?

The Presiding Member: Well, I think from what has been said, the record is clear. I will deny the motion.

Mr. Angell: Exception.

The Presiding Member: Note the exception.

Mr. Angell: My final motion to strike. I move to strike the testimony of Mr. Gieske.* He is the gentleman who came down from Baltimore and who testified, as I recall, to a rather isolated transaction up here in the area northeast of the Desdemona town site. In connection with that witness, the Government assured us that later on it would by other testimony prove that the two pieces of property under consideration were comparable. That the Government has failed to do. So under those circumstances I move to strike Mr. Gieske's testimony from the record.

Mr. Fullerton: We would oppose the motion in this far, that the testimony of Mr. Gieske should be limited in the same manner that the stipulation in regard to the Hogg Creek sale to the Magnolia on November 24, 1919, was limited: to show that there was a market for large properties in the field after August 1, 1919.

The Presiding Member: With that limitation, have you any objection?

Mr. Angell: I think I would rather press for a ruling on the motion to strike. The witness Gieske did not express an opinion on the value of the Duke-Knoles leases. He simply testified to this particular transaction. He did not undertake to connect it up with the Tex-Penn property. The Government left him completely hanging in the air after they had assured the Board and ourselves that subsequent testimony would tie them up. Under those circumstances, I think the whole of his testimony should go by the board.

* Pages 1277 to 1280, *ante*.

The Presiding Member: Well, it seems to me in the light of Mr. Fullerton's statement as to the limited purpose for which he submits the testimony that the motion should be denied.

Mr. Angell: Exception.

The Presiding Member: Note the exception.

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The hearing was resumed at 2 o'clock P. M. pursuant to recess.

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LESLIE SPOONTS, a witness called on behalf of the respondent, was duly sworn, and testified as follows:

*Direct examination.*

My name is Leslie Spoonts. I reside at Fort Worth, Texas. I am an independent oil operator. In part of 1918 and all of 1919 I was in the oil business. I attended public schools at Fort Worth, Texas, the Morgan Park Academy at Chicago and the University of Texas. My line of study was academic until entering the university. I took the first year in civil engineering, fulfilling scholastic requirements to enter law school, and the second year in law school. I am a member of the Texas Bar and have been such since April 1, 1912. After being admitted to the bar I remained in Fort Worth in my father's firm for several months and upon his taking sick and having to go to a hospital, I moved to Houston and practiced in Houston until March, 1918. In March, 1918, I entered the employ of the Gulf Production Company as a scout, and I was stationed at Coleman County, Texas, until September, 1918. I had the regular duties of an oil company scout. After ceasing to be a scout I was transferred into

the office at Fort Worth to book assistant to B. S. Sorrell, head of land leases. My duties included the purchase of leases, the getting together of all business in connection with the purchase, sending them on down through the mill of title examination, receiving them back after title examination, seeing that the requirements were furnished and that all papers were in order and paying off for leases when the title had been completed. In addition to that, I directed the activities of our lease and scout men, acting in the capacity of, you might say, chief land man, second only to the authority of Mr. Sorrell, in that department.

In that position I purchased numerous leases. I made a deposition in this case. I am familiar with the map of the Gulf Production Company submitted to the respondent here and which shows their acquisitions in the Desdemona Field. I purchased some leases on that map. I actually took part in the purchase of the McMillan lease, acquired November 23, 1918, of 106 acres for which we paid $26,500. The others were F. J. Wilson lease, J. L. Jones lease, and the A. Kevitt lease, the D. B. Shore lease, the Eulah Black lease; in addition to taking part in the active purchase of those leases, I handled all papers in connection with the Gray lease, the S. M. Fannin lease, the Prater Grice lease, all in that locality.

The total consideration which the Gulf Company paid for these leases was $196,910, if my arithmetic is right. The approximate consideration which I paid out as assistant to Mr. Sorrell for leases which the Gulf Production Company purchased in all fields while I was Mr. Sorrell's assistant was approximately $2,000,000. I remained with the Gulf Production people until November, 1919. After that I accepted employment as station manager for the American Oil Engineering Corporation. S. Porter of the engineering firm of Sanderson & Porter was vice-president and general manager of that company. The company was organized by Sanderson & Porter, the Guaranty Trust

Company, Hayden, Stone & Company, a member of the Thompson-Starrett Company, and one or two other banks that I don't now recall the names of. I was called station manager. My immediate superior was D. P. Dyer, general manager. My activities had to do with the Mid-Continent Field. My duties were the duty of managing their affairs in general, which included everything from keeping books up to buying leases, production, turning production, the drilling of wells, the sale of leases, acquiring of materials, distribution of materials and all other things in those connections.

I bought leases for this company. Those purchases were made subject to the approval of some higher officer. We drilled several wells. We never built any pipe lines, nothing except lease pipe lines which are not classed as pipe lines. I might say that the company did, but I was not personally interested in the construction of the pipe line they built.

I remained with that company for about ten and one-half months. I resigned to go into independent operations in the Breckenridge Field. I have been an independent operator ever since. I drilled wells at Breckenridge, Northeast Stevens County, Young County, Jack County, Coleman County, Shackelford County, Callahan County, Eastland County. I believe that is all of my drilling. I have dealt in leases in all these counties, and others. At times I had partners and at times I was by myself. I was a member of the firm of Hedrick & Spoonts, which was composed of J. B. Hedrick, Marshall Spoonts and myself, which drilled four wells in Breckenridge town site; three were operating wells, two small wells, one of which probably paid out and the other one did not, and north 41, one of the wells was the largest town site well drilled in Breckenridge town site proper. I have drilled either independently or with my associates in the neighborhood of 100 wells. I have spent for myself or myself and asso-

ciates in money in the neighborhood of three and one-quarter million dollars. I have gone on numerous confidential lease expeditions, mostly for the Gulf Production Company. Since leaving them, I have spent a good bit in excess of $100,000 in buying leases for that company. That was not included in the figure I mentioned.

I went with the Gulf Company as Mr. Sorrell's assistant in September, 1918. I knew of the coming in of the new Duke-Knoles well. To familiarize myself with the field, I made a call there somewhere close to September 9th on my way to the office; it may have been a day or two sooner or later, but I had been required to come into the office and I went to the Desdemona Field, which had only one well, for a few days, to look the situation over, and I went to the Fort Worth office, and from then on I had the benefit of scout reports and all reports of every nature that came into the office. Part of my duty was to keep posted very carefully about any activity in Desdemona.

The Gulf Production Company had a great number of scouts in that district. We got scout reports every day, but we got a general scout report every week. It was my duty as Mr. Sorrell's assistant to see that the scouts made full reports on all phases of activities. The scouts were supposed to cover all well activities, such as drilling—well, I will begin at the beginning; such as the location and erection of derricks, spudding in, drilling progress, and on through to completion, which, of course, covered whether it was a dry hole or whether a producer, and what it produced, and how much. They made reports on all lease transactions that came to their notice in their field, all activities of every character relative to the oil business, such as pipe line construction, establishment of camps, moving in of materials, and so on.

They reported on storage tanks and tank farms; a summary of all piece-meal reports was made during the week, together with a general report; that was only each week.

They were gathered together on Thursday by Mr. Sorrell and myself and edited, you might call it, and all matters of importance grouped together and turned over to a stenographer to copy them into one comprehensive report, which report was made in numerous copies, which were distributed to various sources, such as Pittsburgh, Houston and the offices of the various men and departments, and their assistants.

There was no further compilations of data in connection with the scout reports; that was final, and was put on our desk for ready reference. The engineering department was furnished with a copy of this report and tabulated all data on the maps and well cards, what you call the sand cards here. The purpose of these reports and summaries was to keep us carefully advised as to what was going on; we studied them; they were our bible. This was done to keep ourselves thoroughly posted as to activities, prices paid, production, the dry holes, and all the balance of the things. Our particular department needed this particular knowledge because we were the ones that bought the leases. No lease, except wild-cat leases, were bought without our approval or instructions.

I have examined, in a way, all of the exhibits which have been introduced in this hearing. I have more particularly examined a few of them which have to do with the matters I am interested in telling you about. I have a list of those I actually studied and worked on. I have Petitioner's Exhibits 30, 73 and 75, and Respondent's Exhibits AR, AS, AT, AU and AX, maps BC to CM, CO, CP, CQ and CR. I have read Mr. Ralph Davis' testimony, Mr. Oliver's and a little smattering of several others that I paid no particular attention to to note in my mind. I have heard practically all of the testimony that has been introduced since the morning of October 31st. The witnesses I heard were Mr. Grimes, Mr. Kent, Mr. Logan, Mr. Simons and Mr. Gieske.

Q. Now, Mr. Spoonts, I am about to ask you to express your opinion of the fair market value of the Duke-Knoles Tex-Penn leases as of August 1, 1919, and in using the term fair market value, I mean the price at which a seller who is willing but not obliged to sell and a buyer who is willing but not obliged to buy, both having knowledge of the facts involved, and this designation contemplates that such price be in cash or its equivalent and ascertainable with reasonable certainty and realizable within reasonable bounds, considering the character of the property to be valued, in forming the opinion for which I will ask you, I wish you to exclude from your consideration all facts occurring after August 1, 1919, on the facts known to you, regarding the Tex-Penn Duke-Knoles leases, which had occurred on or prior to August 1, 1919, and concerning which you have testified and those which you have seen in the record of this hearing or in the testimony you have heard here, and giving effect to conditions as they existed on August 1, 1919, and what might reasonably have been anticipated from such facts and conditions, and in the light of your experience, are you able to form an opinion of the fair market value as of August 1, 1919, of the Tex-Penn Duke-Knoles leases in Eastland, Erath and Comanche Counties, Texas: answer yes or no. A. I cannot answer that question yes or no, because of the statement that is in it: you said the Tex-Penn block about which I have testified: I have not mentioned it, so outside of that I can.

Q. You testified, did you not, that you had seen the property? A. I said I had been in the Desdemona Field.

Q. Well, I will reframe the question. On the facts, regarding the Tex-Penn Duke-Knoles leases, which had occurred prior to August 1, 1919, which you testified that you have seen in the record of this case, or heard in the testimony given here, and giving effect to conditions as so shown, as they existed on that date, and what might

reasonably have been anticipated from such facts and conditions and in the light of your experience, are you able to form an opinion of the fair market value as of August 1, 1919, of the Tex-Penn Duke-Knoles leases in Eastland, Erath and Comanche Counties, Texas; answer yes or no. A. Yes.

Q. Have you formed such an opinion: answer yes or no. A. Yes.

Q. Now let me ask you if that opinion would be modified in any respect if the date as of which you give the fair market value was July 25, 1919, instead of August 1, 1919? A. No.

Q. Now, being particularly careful not to state the amount of the value in dollars and cents for the Tex-Penn Duke-Knoles leases or any of them, please state to the Board the essential facts, factors, methods and reasons you have used in forming your opinion of the fair market value of those leases. A. I have taken into consideration a number of factors, reasons or whatever you want to call it. They are: First, my familiarity with the field, including leases, leasing activities and wells, whether location, drilling or completing;

Second, the optimism of the oil fraternity in general, based on price and quality of the oil produced in this field:

Third, with flush production, which quickly paid out the original cost, and settled production which supplied the profit.

Q. What do you mean by the expression "paid out"? A. Pay their drilling costs, and the costs of the lease; I mean, the original big money that had to be paid for the lease, in drilling the well. The fact that gas wells, in my opinion, were no condemnation, but on the contrary were a valuable asset, both a valuable asset for the reason that the pipe lines could come after gas as well as come after oil, and that undoubtedly gasoline plants would be built, as it was reported the gas had a high gasoline content.

Mr. Davis: Is that fourth or fifth?

The Witness: I think that is fourth, because I was discussing gas under that subdivision. Small wells were no condemnation at that time, as they were offset by large wells, in many instances, or several instances rather, in the active part of the field at that time.

The next, similarity between the southern part of the pool in which the Tex-Penn block lay, and the northern part of the pool where the intense activity was then and had been taking place. This similarity is expressed in large wells and small wells offsetting each other. Gas wells near producers of oil, takes into consideration also that gas wells might turn into oil producers. I considered the pipe line runs in June, 1919, were approximately 396,000 barrels of oil run, and in July, at the time I first considered the value of this block, my report showed that the production being run was about double. The records verify the fact, the exhibits in this case, that the pipe line runs in July, in the field, were 744,000 barrels, almost twice the runs in June; the cost of drilling, as shown in Petitioner's Exhibit 75. Only two of these wells had produced long enough to make any estimate of their value at that time. In bearing out that fact, I will quote that Duke-Knoles No. 1 had produced 331,000 barrels of oil, Duke No. 1 had produced 45,041 barrels of oil, and the other wells all, as I recall it, of which were brought in in June or later, had produced 36,049 barrels of oil, showing a total of 412,109 barrels of oil, or a total income, at $2 a barrel, $2.25, showing $927,326. Now, I may be a little bit off on my arithmetic. The Magnolia well which was on the lease which was inside of the Tex-Penn block, in addition, had produced 92,486 barrels of a value of $208,093, showing a total of $1,135,439 production from wells.

Q. How many barrels is that? A. How many what?

Q. How many total barrels? A. Total barrels, 504,595, out of the Tex-Penn and Magnolia Duke combine. I believe I gave the total on the Tex-Penn. Now, offsetting that profit, that income, by the cost of the wells that had been drilled, I believe, at that time there were twelve wells on the Tex-Penn block, which is a little bit in excess of the figures set out by Petitioner's Exhibit 73, I believe the cost of those wells was in the neighborhood of half a million dollars. For the use of my figures, I used one-half million dollars, leaving a profit on thirteen wells, including Magnolia Duke-Knoles, of $635,439. Now, that had been drilled up to date, at the time of the consideration of these wells. No one was able to tell at that time what was or was not a profitable well, as they have and I have reached our conclusion since, if not prior to August 1. Working against them on that was the fact that the wells were producing from sand, not from a lime as Ranger, and the decline there was not comparable with the Tex-Penn block wells or Desdemona pool. I took also into consideration the physical conditions on the block and around the block itself. The edge wells on the blocks and just off the blocks convinced me that they were just on the edge of an oil pool, because of the fact that we had big wells up here and out here we ran off to small wells and dry holes. Practically all of them in that immediate vicinity of the outline of this block showed oil or gas was produced in the producing horizon, indicating to the initiated that was only an edge well, taking into consideration the fact that the big wells were over into the middle of the area enclosed by these small and edge wells.

Q. Did you give consideration to the initial production and the later daily production? A. I did.

Q. Did you give consideration to the relation of the two? A. Would you explain the question a little bit?

Q. Did you give consideration to the relation of the two—did you consider the decline in production? A. I did.

Q. Now, do I understand correctly that in so far as the Tex-Penn Duke-Knoles leases are concerned, you are relying only on the facts which appear in the record in these appeals prior to August 1, 1919? A. Yes.

Q. Now, you have said that you have formed an opinion as to the value of those leases on that date, or will state, rather, that you are able to form an opinion. Have you formed such an opinion? A. I have; I formed it at that time.

Mr. Davis: Formed it at that time?

The Witness: Yes, sir.

*By Mr. Fullerton.*

Q. At what time? A. Just prior to August 1, 1919, at the time of the purported sale being made by Tex-Penn Oil Company et al. to the Transcontinental; the name Transcontinental I did not know about at that time.

Q. What, in your opinion, was the fair market value on August 1, 1919, of the Tex-Penn Duke-Knoles leases? A. I have set my figure——

Mr. Davis: I object to the question unless it is shown exactly what tracts he has in mind and unless the request for his opinion conforms with the qualifications specified in the Act.

Mr. Fullerton: The witness has already been asked and has given the basis of his opinion and recited the things he relied on.--

The Presiding Member: There is one thought that comes to my mind, and that is whether the witness is to testify to that sale or whether he is testifying to a value that he had in mind in 1919, which would not include, I take it, the thought embodied in your question.

Mr. Fullerton: Let me reframe the question to meet your Honor's suggestion.

*By Mr. Fullerton.*

Q. Is the opinion for which I am asking based on the question which I asked you just prior to this time and on the reasons that you have recited? A. It is.

Mr. Davis: I submit that that is quite an indefinite way to correct your witness unless his memory is directed to the particular prior question that you have in mind.

Mr. Fullerton: Well, may we ask for a ruling?

The Presiding Member: I can rule, but I don't think it is very complete what this witness is to testify to, whether he is about to answer your hypothetical question or is about to pronounce here an opinion which he arrived at in 1919, and I would like to get that clear before I rule.

*By Mr. Fullerton.*

Q. Are you, Mr. Spoonts, about to answer my hypothetical question or are you about to give an opinion which you formed in 1919? A. I would like the question put to me again before I answer that.

Q. Do you want the hypothetical question again? A. Yes.

Mr. Fullerton: Will you read the hypothetical question, please, Mr. Reporter?

(The question referred to was read by the reporter as above recorded.)

The Witness: I am about to answer your hypothetical question.

The Presiding Member: I will overrule the objection.

Mr. Davis: Exception.

*By Mr. Fullerton.*

Q. Now, Mr. Spoonts, tell us what, in your opinion, was the fair market of the Tex-Penn Duke-Knoles leases on August 1, 1919. A. Approximately $12,000,000.

I arrived at that amount by consideration of the block as a whole, and the facts that I have given, which would indicate that sufficient production would be derived from the block to repay the investment as to bonus, drilling cost and operation, and pay a reasonable profit on the investment, bearing in mind always that I have considered all other facts, factors, as you call them, that I have mentioned before, and the values, market values placed on leases in the locality, by the trading that was done, buying and selling that was done at that time. I anticipated that future developments would be as profitable as the developments up to the time of my consideration.

*Cross-examination.*

My last answer falls in three parts. I consider the block as a whole in the light of probable production. I consider the market value of leases that were being bought and sold in that territory, and third I consider that the future production would be equal to that which was then being shown. Subsequent events did not confirm my estimate about it. Subsequent events tended to decrease my estimate to a considerable extent. Subsequent events, to put it bluntly, clearly showed that this property had no such value as $12,000,000. I anticipated that the future production from the properties would be equal to that which it was showing on the 1st of August. I was taking into view the production from the field as a whole. The production from the field as a whole showed, in July, almost double what it showed in June. There was no corresponding increase or showing of the Duke-Knoles leases

in those two months. The July production on the Duke-Knoles leases was somewhat smaller than the production in June.

Q. And a very material falling off from the earlier months, wasn't there? A. I will have to carefully answer that question: I will have to look at the exhibits.

Q. That is Exhibit No. 30, I think you told us that you considered Exhibit No. 30. A. Yes, sir.

Exhibit 30 shows January production of 69,000 barrels and in July 33,000 barrels.

Q. Do you know whether the Desdemona Field had developed at that time a quality of rapid deterioration in the output of its wells? A. No more so than all the fields where enormous wells, large wells are brought in, the decline in flush production is very rapid.

That was true of the Ranger Field. It developed subsequently that that was true in the Desdemona Field to a larger extent than the Ranger. That had not definitely developed prior to August 1, 1919. I was a reader in the months of June and July, 1919, of the Oil and Gas Journal. It was a reliable journal, but not as reliable, I think, as my opinion.

Over respondent's objection, objection overruled and exception noted, the following question was asked:

Mr. Davis: I am saying to the witness that I believe it to be from the Oil and Gas Journal of June 13, 1919, and whether it is from that or the Police Gazette, I want to read a statement of fact and see whether or not it compares with your recollection:

"Up to date over 30 competing wells have been completed in Desdemona field, with an initial production of 350,000 barrels daily, the past week's production report showing a decrease of 3,435 barrels over the previous week, the largest percentage of decline for any one pool over a period of 7 days, since oil was discovered in north Texas."

Does that statement compare with your recollection, or doesn't it? A. I don't recall reading that particular excerpt.

Q. I am asking whether or not the statement of facts which I have just read to you conforms to your recollection of what was occurring at the time. A. I don't recollect; I don't recall that the decline was general.

I do not now say that prior to August 1, 1919, the rapidity of this decline was in a matter of general notoriety. That is my opinion. That is my recollection. I was a reader in June, 1919, of the Oil Weekly. That is a reputable trade journal.

Q. I want to read you a statement which purports to be from that journal under date of June 7, 1919, as follows:

"The record of the wells on June 1 is interesting in the light of the unusual productions. With a few exceptions, the wells in this territory, the Desdemona pool, have a record of decline that out-distanced the Ranger field wells."

Can you confirm or deny that statement from your own recollection?

Over respondent's objection, objection overruled and exception noted: the witness gave the following answers:

The Witness: No.

I can neither affirm nor deny.

Assuming for the purpose of my answer, that both those statements were true as they were read to me, that state of affairs would have an effect upon my estimate of the future productivity of these leases.

Q. And if it appeared to be the fact on August 1, 1919, that the wells which had been drilled in this field had shown this extraordinary decline, would you still think it fair to fix the value of the leases on the theory, that their productivity would be maintained? A. Do you want a "yes" or "no" answer?

Q. Well, answer "yes" or "no" and make any explanation you see fit; the question permits a "yes" or "no" answer. A. I don't think it reflects the conditions as I found in my investigation, so I cannot answer.

If it does reflect the condition and if these wells did show the extraordinary decline indicated by the previous questions and assuming that to be true, I do not think it would be fair to value these leases on the theory that their productivity would be maintained.

To my estimate that these leases would produce a sufficient quantity of oil to return their original cost of $12,000,000, to the expense of drilling I would add the necessary overhead and in addition a reasonable profit. I don't believe that I fixed any particular percentage for a reasonable profit. A reasonable profit to the owner would be, in my opinion, interest on the money expended plus the equivalent of interest to double the equivalent of interest; in other words, 6 to 12 per cent. would be a reasonable profit.

Q. You think, then, that an oil operator, especially an oil operator in an undeveloped territory, is justified in taking a venture if he can see a chance for his money back with double interest? A. I didn't say "a chance."

Q. Well, if he can see a certainty. A. I figure that as a certainty.

Q. You figured that on the basis of a certainty, in the light of the facts given to you or as you deduced them, that to the owner it is a reasonable certainty of getting back $12,000,000, getting back the cost of his operations and getting back 12 per cent. interest on the total sum? A. Interest on the money then, and added 6 to 12 per cent. to that; in other words, a maximum of 18 per cent.

I am taking 6 per cent. as my figure for interest. Then I add 6 per cent., plus 12 per cent. or 18 per cent. as a reasonable certainty. I think there is a reasonable certainty of that. I figured just about the same propor-

tion had been used up to date in that equation to be spent in drilling cost and overhead. I mean by that, up to August 1st. Up to August 1st they spent about half-million dollars. I do not figure an additional half-million dollars to fully develop the property. I figure an expenditure of approximately one-half million dollars for every six months. I should say I had figured that they would continue until they drilled up the property. I did not figure how many wells the property would permit. I did not go into the number of locations. In estimating the owner's return, I did not figure at all what the ultimate total would be he would have invested in the property. I did not go clear to the completion on that for the simple reason I did not know when he would stop drilling. I don't think that was a factor of entire uncertainty. It was not possible, in my capacity, of appraiser, to tell with any reasonable certainty what figure the owner would have to recover from this property before his profits began. Neither was it possible to tell according to my method of approach, with any reasonable certainty, what his ultimate profit would be. I don't think that reduced my estimate in the last analysis to a good deal of a guess.

Q. Well, we have not confirmed your estimate by after events and have not confirmed it by mathematical approach. Now, let's try it on the theory of contemporaneous sale. You testified here to certain leases that you bought in this territory? A. Yes.

I was asked about those when my deposition was taken in this trial. I named the McMillan, M. J. Wilson, J. L. Jones, the A. L. Beaty, B. B. Short, Eulah Black, Gray, S. M. Fannion and Prater-Grice, as leases purchased with which I had some connection. I stated in my deposition that the first four of these, the J. E. McMillan, Fannion, Wilson and Gray, were purchased for protection shortly after the Duke-Knoles No. 1 came in and without any geological information or expectation that they would all

be productive. I believe I want to look at my deposition to refresh my memory before answering. I confirm my answer. As to J. L. Jones, I stated that was in the Desdemona town site and that it was "a little streak that went through here that they thought an awful lot of." Just a moment; I am afraid I misunderstood your last question about the town site. The Jones lease is located 1½ miles west of the town site.

Q. Tell us what the little streak was that the Jones lease was in. A. Well, there was a big well that came in at that direction and our geological department figured through here.

At the Ross-Saunders, the Moorehead wells came in July 21, 1,000 barrels, just one location from the Magnolia Petroleum Company, J. B. Moorehead, which came in in May, or April, for 548 barrels. Just offsetting the first well spoken of, was the Pitzer, and west, Mrs. P. J. Dabney came in for a thousand barrels, and on the 7th of July, 1919, our geological department reported that there was a streak going west across there that would be worth, paying a good price for leases.

It was what might be called a "hot streak." The short lease is southwest of the Duke discovery well in H and T C Railway survey. It is the west half of the northeast quarter of that section. I bought that lease as a protection against the Duke well.

Q. What do you mean by that language, "as protection"? A. Leases are bought, surrounding as close as possible, at reasonable price, what we consider reasonable prices, surrounding a producing well that was brought in, in the hope that the production may go to that purchase: not on geology, but protection acreage.

I guess it is purely speculative. For that particular case I was just gambling on a chance that the field will run in that direction not predicated on any geological or engineering deductions. Several of the leases I named

are in that category. They are the M. J. Wilson. Outside of the Prater-Grice, the Jones and Kevitt. That seems to be true of the entire list. The Kevitt is on the north end of the J. A. Curbella survey out of the A. J. Kevitt tract, which is approximately on the west half of the east half in the north end of the survey just north of the Jones lease in the same hot streak. The Prater-Grice was just the center of the Kevitt. It was in the S. A. and M. G. 13 and the B. Parham survey. That was in the east end of the production spoken of a while ago instead of on the west end of it. At the time I bought the Prater-Grice tract there was no production on it. It was on geological information that it was bought as being close to the area they thought would be productive. I have my deposition here. I am looking at Respondent's Exhibit AJ attached to my deposition, which purports to be a check signed by me to J. E. Brewer under date of May 31, 1919. The legend across the stub of that check reads as follows: "For account 25, account of a five year commercial lease executed 7-8-18." It looks like "by J. L. Jones, et ux, on 40 acres of 1 Juan Curbella survey, map 103, coordinate N-30." I bought that for protection. Document offered and received in evidence; marked Petitioner's Exhibit 103 (see Folder of Unprinted Exhibits).

The originals were returned to the Gulf Production; that is a photostat.

Witness was asked to look at the check attached to his deposition as Respondent's Exhibit AK, purporting to be signed by himself, dated July 12, 1919, to Ed. V. Parsons. There are two checks involved in the Kevitt deal. One to Parsons and one to Ike A. Wynn. The legend on the check to E. V. Parsons reads: "Proportion due payee in consideration for A. J. Kevitt et ux lease Ed. V. Parsons assignment Eastland County, Texas." Somebody else has written here "Protection against Desdemona development."

That is not in my handwriting. I have no idea when that was written on there. It is of no importance. It is a protection against the Desdemona development anyway. I think the legend is of no effect, so I do not see what difference it makes one way or another. I did not write it and I do not know who did. I do not say it was not on the check when it was issued and delivered to the payee. Check offered and received in evidence as Petitioner's Exhibit 104 (see Folder of Unprinted Exhibits).

Respondent's Exhibit AK attached to my deposition, purporting to be signed by me under date of July 12, 1919, to Ike A. Wynn, is genuine. It is a photostat of the original. "For assignment by F. M. Aiken et al to Ed V. Parsons of 5-year commercial lease executed by A. J. Kevitt on 20 acres of the J. Curbello survey, Eastland County, map 103, co-ordinate N.O.—30. Protection in Duke field." Check offered and received in evidence, marked Petitioner's Exhibit 105 (see Folder of Unprinted Exhibits). Exhibit AL with my deposition is a check given in payment for the Prater-Grice lease. I identified it as such. The notation at the end of the check is like the ones that I drew, "Mineral lease covering two tracts, first 29¼ acres out of S. A. & M. G. Railway Company survey 13, Eastland County, second 40 acres of land out of B. Parham survey in Eastland County, Texas. South one-half, map 103, co-ordinate N—31." "Protection against development in North Comanche County." Check offered and received in evidence and marked Petitioner's Exhibit 106 (see Folder of Unprinted Exhibits).

At the time I purchased the Prater-Grice lease there was no drilling on or in the vicinity of that tract. I think the Hogg Creek-Carruth drilling was the closest drilling at that time. That would be Magnolia. Some of the town site work might have been started, but I am not positive. The Prater-Grice tract was practically adjoining the town tract. Say a quarter of a mile. With the exception of

the Short lease, and the Wilson lease on the line between Erath and Comanche Counties, all of these leases were north of the Eastland, Comanche County line.

Three leases were bought immediately after the discovery well Duke No. 1 came in, within a short time. That Short lease was bought on November 15, 1918, which would be more than two months after the date of the discovery well. That was in Comanche County, south of the Eastland County line. I described the one in Erath County. It does not show on that map. Then I said the other one. You had excepted Short in your statement. The Wilson is here in the corner of the B. Fry. That is one and the Short over here are the two to the south. One to the southeast and one to the southwest.

Q. Am I to understand that you think it is possible at all to compare oil and gas leases in a developing field on the mere basis of comparative acreage regardless of situation and outlook? A. Will you repeat that question?

(The last question was read by the reporter as previously recorded.)

A. The prices paid create the market.

If you had 500 acres in the Desdemona Field and I have 50 acres without considering conditions, I certainly cannot say that your acreage, without more, is worth ten times as much as mine.

Q. If you happen to have 10 acres which is in the hottest center of the hot spot and I have 100 acres a mile away or a half-mile away, can I say with any assurance that my acreage is worth ten times yours? A. Certainly not.

Q. You would not suggest for a moment, would you, that a comparison could be made in this field purely on an acreage basis between the Duke-Knoles leases and the smaller parcels that were sold north of the Eastland County line? A. Is that your question?

Q. That is my question. A. Your question said purely on an acreage basis?

Q. Yes. A. No.

Q. The fact is acre for acre the tracts are not comparable, are they? A. I do not know.

I would suggest, for instance, under conditions, that the prices that were being paid for town lots in the Desdemona town site could be reflected over the 3500 acres embraced in the Duke-Knoles leases. Under the comparative conditions, under the conditions surrounding them. The similarity of the particular area as compared with a similar condition on the Tex-Penn block. I am not saying that there were any similar conditions on the Tex-Penn block. You ask me to answer the question, and I say yes. The following question was repeated to the witness:

"You would not suggest, for instance, that the prices that were being paid for town lots in the Desdemona town site could be reflected over the 3500 acres embraced in the Duke-Knoles leases?"

A. My answer is if a similar condition exists around a town site lot or a town lot that exists at some point in the block, that those would compare, yes.

In spots I should think a similar condition existed. Some of the town site wells came in big and some of the wells on the Tex-Penn block came in big. Some of the town site wells came in smaller and some of the wells on the block came in smaller. If you want me to, I can point it out and figure from the exhibits on hand which wells would compare.

Q. Tell me if you can place on the Duke-Knoles leases where the condition that prevailed in the town site, area of Desdemona and the town lot area was reproduced? A. The town site area?

Q. Yes. A. You mean the entire area?

Q. No, I do not mean the entire area. I mean the town site area. A. Your last question involved a lot.

Q. Let me reframe it, then, so we will not misunderstand each other.

Find any place on the Duke-Knoles tract where the condition prevailing in the town lots that were drilled or drilling in the Town of Desdemona is reproduced. A. There was not that close drilling on the Tex-Penn block. There was not that wild rush for locations there either. There could not be that eager crowd of people to get a well down before the next man got his in. I guess that had the effect of sending prices in the Desdemona town site up into the skies. There was no similar excitement so far as I knew in any part of the Duke-Knoles area. The last purchase for the Gulf Production Company in the Desdemona oil field was the Kevitt lease on July 12, 1919.

Q. Why did you not buy any more leases there after that date? A. Right after that another lease was bought while I was on my vacation that I was apprised of when I came back, which involved a hundred thousand dollars consideration, but I am not able to go further in that statement. Why didn't we buy any more?

Q. Yes. A. We were shut down from buying any more.

In the beginning, in September, 1918, J. V. Mueller bought several leases. He was our lease man covering this territory. He stepped in and would take the lease. I am unable to testify about the $100,000 tract I spoke of. It is to the west. I do not know whether I can locate it or not. I do not suppose I should have mentioned it, but you asked me if that was the last purchase we made. It is made by Mr. Brown. I do not know where it was and I do not know how close it was to Desdemona. I am not familiar with it. As far as my actual knowledge of the details in connection with that additional trade is concerned, the leasing activities on the part of my company were over by the 12th of July, 1919. I was on my vacation and the additional trade was completed during my absence.

I consider, as a possibility for this property, the fact that gas would be marketable. There were, on August 1, 1919, no transportation or distribution lines for natural gas into the field at all. Some lines have been laid. I do not know the exact date, but the Lone Star Pipe Line is in there now taking gas, manufacturing gasoline and transporting the gas even to Fort Worth. I cannot tell you when it went in. I do not know.

My opinion of the value was affected by the general optimism of the oil fraternity. I guess it is a nominal emotion of the oil fraternity. I was referring to the optimism of the oil fraternity in general. I was not particularly referring to the excitement that was prevailing in the Desdemona Field. That had something to do with it. It was an excited area. In times of that excitement you always have violent fluctuations in value. In this field at that time I had no guide or standard by which I could determine how long that excitement would continue. It is an excitement which dies as quickly as it comes. When it dies, value dies just as fast. There is no method by which I can determine with reasonable certainty how long that excitement will continue or how long the prices that it produces will last.

Q. What did you understand the question asked by Mr. Fullerton to mean when he told you that this value must be one ascertainable with reasonable certainty? A. I do not know that I can expound on the words that are there. It is perfectly clear to me, it must be determined with reasonable certainty and ascertainable with reasonable certainty.

The phrase meant to me that you must know with reasonable certainty that it is obtainable. That you can get that amount. That the amount referred to is gettable. I understood him to mean when it must be realizable in cash or its equivalent within a reasonable time that the amount that was involved could be realized within a rea-

sonable time. A time commensurate with the size of the undertaking. It probably would be weeks. It might be but days. It is a deal of magnitude. You would hardly expect a man to reach down in his pockets and hand you money and write you a check. There are few with a balance that big in the bank.

Q. What reason have you for saying there is a reasonable certainty that there would have been someone there ready to pay cash or its equivalent for this property to the amount of $12,000,000? A. I think that is true,

Q. What reason have you for thinking that is true? A. My opinion of all of these factors considered, I certainly think it is true. That is my opinion. I thought so at the time and still think so.

(Whereupon, at 4 o'clock P. M., an adjournment was taken until 9.30 o'clock A. M., of the following day, Friday, November 11, 1932.)

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Hearing (resumed) at Washington, D. C., on the 11th day of November, 1932, at 9.30 o'clock A. M.

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*Redirect examination.*

I considered the decline of wells on the balance of the Desdemona Field, along with the decline of wells on the Tex-Penn Duke-Knoles leases. If the decline in those wells had been less rapid that fact would have affected my valuation. It would have made the property more valuable in my opinion. In answering counsel on cross-examination that subsequent events lowered my estimate of the fair market value of the Duke-Knoles as of August 1, 1919, I did not mean by that that I wished to change the figure which I stated as the fair market value. I simply meant as of the time he asked me. My opinion would not be

retroactive. It would only apply to the time he asked me about.

Q. By "the time he asked you about" what date do you refer to? A. He said if subsequent years showed that the wells were dry and the decline so much sharper, and so forth, and so forth; in other words, I took that to mean say, September 31, or October, or down the line when the rapid decline in the field, and the field began to go to pot, did I still think that the property at the time he asked me about it was worth that much money. I did not refer to my valuation of the period prior to August 31.

Q. Do you mean August 1, or August 31? A. I mean August 1.

When you pay a specific price for an oil property there can be no uncertainty as to the price paid. The speculative aspect in the purchase of an oil property is as to whether or not the property will produce what you pay for it.

Q. Now, counsel stated on cross-examination that he did not see that your value which you placed on the property could be sustained by mathematics. Will you state, in as simple form as possible, just what the mathematics are in arriving at your valuation of this property?

Mr. Davis: I object to that because it is not legitimate redirect examination.

Mr. Fullerton: If the Board please, counsel quizzed him regarding, as he expressed it, the mathematics of the thing. Now, this witness has made certain statements on direct examination. Counsel has said they did not prove out mathematically. We wish the witness to show that they do prove out mathematically.

Mr. Davis: Why is that not a matter in chief?

The Presiding Member: I will overrule the objection on that ground.

Mr. Davis: Exception.

The Witness: Read the question.

(The pending question, as recorded, was read by the reporter.)

A. I stated that the twelve wells on the Tex-Penn block and the Magnolia-Duke well which is inside the Tex-Penn block had produced a profit of $635,000. Estimating that the thirteen wells would each cover or drain approximately 10 acres each, it is a matter of simple arithmetic to arrive at the conclusion that 3600 acres of like production and like drilling would produce considerably in excess of the $12,000,000 estimate I put on it; in fact, would produce between seventeen and eighteen million dollars worth of oil over and above operating and developing costs. There are other features of value, such as the probability of the gas wells turning to oil and the value of the gas wells in the future as to gasoline plants and commercial gas pipe lines.

*By Mr. Fullerton.*

Q. Did you take into consideration any further production from those thirteen wells? A. There was at the time of the figures in addition to the amount that had already been realized a then production of approximately 1100 barrels a day, which, of course, was of value.

Q. Where do you get that 1100 barrels? A. That is gotten from Petitioner's Exhibit No. 77.

Q. Now, yesterday counsel for petitioners read to you the following statement concerning the Desdemona Field in the June 13, 1919, issue of the Oil and Gas Journal:

"Up to date over 30 competing wells have been completed in the Desdemona Field with an initial production of 350,000 barrels daily, the past week's production showing a decrease of 3,435 barrels over the previous week, the

largest percentage of decline for any one pool over a period of seven days and since oil was discovered in north Texas."

He then stated to you: "Assuming that that statement was true," he asked you to assume that statement was true, whether you agreed. You replied, "If I recall, that that was a reliable journal and that the decline was very rapid."

I now read you a statement concerning the Desdemona Field from the August 1 issue of the same Oil and Gas Journal. This is dated August 1st, 1919, the same Oil and Gas Journal. It is as follows: "Desdemona is one of the brighest spots today in the oil horizon in west Texas. This field has about proven itself a match for 'Burke-Burnett' when it comes to big wells." I now ask you: Assuming that statement to be true, was that a matter of general knowledge in the oil industry?

Mr. Davis: Objected to as not redirect examination.

The Presiding Member: I think you are going afield, Mr. Fullerton. We are not trying out the issue whether or not this paper at one time said one thing and at another time said something else.

Mr. Fullerton: The statement from the Oil and Gas Journal was admitted over the objection of counsel for respondent, as the Board will recall. We believe if statements which are favorable to the petitioner's outlook from the Oil and Gas Journal, over our objection, are admissible in their making of the case, that our statements, or any statements which are favorable to the respondent's case, are equally admissible. This is sort of a case of sauce for the goose.

Mr. Davis: I am perfectly willing to abide by that, and I now offer in evidence as a part of the cross-examination these two extracts, one from the Oil and Gas Journal, and one from the Oil Weekly,

and I will agree that my brother Fullerton may offer in evidence the extracts he wants to read.

Mr. Fullerton: The offer is a bit out of order in point of time.

The Presiding Member: I do not understand that the petitioner offered in evidence extracts from the Oil and Gas Journal.

Mr. Fullerton: Neither has the respondent. We have used the identical language as nearly as it was possible to follow him.

The Presiding Member: The petitioner was cross-examining a witness and testing his opinion evidence that he had given. I think he might very well call to his attention any matter for the purpose of breaking down that evidence, but it does not seem to me it is proper redirect examination to bring in what the paper may have said at another time. I cannot see where that is going to be helpful in deciding this case.

Mr. Fullerton: We fail to see the distinction as between the former ruling and the position of the petitioner on this ruling.

The Presiding Member: I will sustain the objection.

Mr. Fullerton: Exception.

The Presiding Member: Note the exception.

*Recross-examination by Mr. Davis.*

Q. In answer to Mr. Fullerton, you spoke of the field having gone to pot. When did the Desdemona Field go to pot? A. Generally considered to be the latter part of September, as I recall it.

Q. 1919? A. Yes, sir. Beginning about that time.

Mr. Davis: That is all.

(Witness excused.)

Ruling on respondent's offer of testimony of B. H. Stephens:*

At a subsequent session of the hearings the following transpired pertaining to respondent's earlier offer of certain testimony from the deposition of the witness, B. H. Stephens:

The Presiding Member: Do you want to take up the matter of the depositions?

Mr. Foley: Yes.

The Presiding Member: All right. Proceed.

Thereupon, further argument was heard upon the admissibility of the testimony.

The Presiding Member: I can state my views or the views of the Division. We have given this matter a good deal of study. * * * We have not been able to find any decision by the Supreme Court or by the Courts of the District of Columbia directly in point. We are convinced that the great weight of authority would exclude testimony of this character, * * * What we have to determine is the value of certain shares of stock. In order to prove the value of those shares we are receiving testimony as to value of the assets of the corporation. We go a step further and we are receiving evidence of sales of what is said to be comparable property. Now, you ask us to go a step further and receive offers which are not even offers of property similar to the property we have to value, namely, shares of stock. I certainly think it leads us too far afield. That will be the ruling when the time comes; in other words, we will sustain the objection.

Mr. Fullerton: When the petitioner objected and arguments were made we were at page 6 of the deposition * * * of B. H. Stephens. I will read back to pick up the context on page 6 of these depositions * * * of B. H. Stephens. The previous question was: "Do you know or do you recall the property on which they wished to receive bids?"

* See page 1148, *ante*.

He answered, "Well, there were a great many leases. The way we were situated we owned half of what is known as a working interest in the most of their leases. They had a few that other people owned an interest in. We submitted two bids, one was for the balance of the working interest in the leases in which we were interested." Question "Do you recall what was the amount of that bid?"

The Presiding Member: There was a previous objection and that was overruled. I do not know if that is the place to make the objection. The ruling is probably inconsistent * * *. At the bottom of page 5 you have the following objection: "Petitioner objects to the offering of any testimony concerning negotiations or offers for any properties referred to by the witness unless it be shown that such negotiations terminated in concluded contracts." I have marked that "Overruled." We will proceed from the point Mr. Fullerton started to read from.

Mr. Adams: Petitioner desires to note again the objection stated above with reference to testimony concerning bids or negotiations not shown to have resulted in concluded transactions.

The Presiding Member: The objection will be sustained.

Mr. Fullerton: Respondent offers to prove that this witness, if permitted to answer, would have answered as follows:

"Our bid for the working interest in leases in which we were interested was $6,600,000."

Respondent saves an exception to the ruling of the Board.

The Presiding Member: Very well.

Mr. Fullerton: Question: "What was the other bid?"

Mr. Adams: Petitioners desire again to note the objection stated above with reference to testimony concerning bids or negotiations not shown to have resulted in concluded transactions. That objection does not appear in the transcript, but it is the distinct question that we raised. It is on the second or alternative offer.

Mr. Fullerton: There is no point made by respondent that the objection was not reiterated at this point.

Mr. Davis: The objection was carried on to all this testimony in reference to these bids without renewal.

The Presiding Member: I will sustain the objection. I wonder if it may not be understood that the objection goes to all of this, or am I to note it to each question and answer in this record?

Mr. Fullerton: To each question and answer to which the petitioners object.

The Presiding Member: Yes.

Mr. Fullerton: Respondent offers to prove that the witness, if permitted to answer the question, would have answered: "$8,100,000," and we save an exception to the ruling.

"On what property was the second bid made?"

Mr. Adams: Same objection.

The Presiding Member: Sustained.

Mr. Fullerton: Exception. The respondent offers to prove that the witness would have answered, if permitted, that "the second bid was to include the Hogg Creek's working interest in all of the leases they were interested in."

"Q. What was the amount of the second bid?"

Mr. Adams: Same objection.

The Presiding Member: Sustained.

Mr. Fullerton: Respondent offers to prove that the witness, if permitted, would have answered "$8,100,000." An exception is saved to the ruling.

The Presiding Member: Let the record so show.

Mr. Fullerton: "Q. Were these bids in cash for those properties?"

Mr. Adams: Same objection.

The Presiding Member: Sustained.

Mr. Fullerton: Respondent excepts to the ruling and offers to prove that the witness, if permitted, would have answered: "Yes, sir."

"Q. What was the result of the bids? A. They were all rejected.

"Q. In what capacity did you make the bid?"

Mr. Davis: Objected to.

The Presiding Member: Sustained.

Mr. Fullerton: Exception saved. Respondent offers to prove that the witness, if permitted to answer, would have said, "Well, I was assistant manager of the company; always had authority during the time I was assistant manager, you might say, from the time I went to the vice-president's office in 1912, to make my own guess and use my own judgment in anything I wanted to.

"Q. Then you had authority from the Magnolia Company to make bids for that property in the amount you stated?"

Mr. Adams: Petitioners object to proof of the witness' authority to act in the capacity in question by his own testimony, and also on the same general grounds heretofore stated.

The Presiding Member: Sustain the objection.

Mr. Fullerton: Exception saved. Respondent offers to prove that the witness, if permitted, would have answered "Yes, I had the authority to make any deal I wanted to."

"Q. How did you arrive at the amount in dollars which you bid?"

Mr. Adams: Petitioners object to further testimony concerning the bid in question as not affirmatively showing the transaction is comparable to any of the properties at issue in this case; that all testimony concerning the negotiations is immaterial and irrelevant to any issue being tried in the present cause, and objects further upon the ground this witness has not been shown to be sufficiently qualified to testify to the valuation of the various properties involved. And the same general objection.

The Presiding Member: I will sustain the objection on the grounds heretofore indicated.

Mr. Fullerton: Exception saved. The respondent offers to prove that the witness, if permitted, would have answered: "Just used my judgment as to the value of them, which might have been right or wrong.

"Q. Was that your personal judgment or were you in consultation with other officers or employees of the Magnolia Petroleum Company?"

Mr. Adams: Same objection.

The Presiding Member: Sustained.

Mr. Fullerton: Exception. Respondent offers to prove that the witness, if permitted, would answer: "Our company at that time, it was not a corporation, it was a joint stock association. It was controlled by five trustees, of which Mr. John Sealey of Galveston, Texas, Mr. E. R. Brown, Dallas, Texas, and Judge George C. Greer of Dallas, Texas, were three of the members. We held a conference in Mr. Brown's office between Mr. Brown, Judge Greer and myself; then we phoned Mr. Sealey and told him our views on it. Those three, which would be a majority of the trustees, instructed me to go to Midlothian and submit a bid based on my judgment, but put no limit on me.

"Q. Did you have any report from the engineers or employees of the company to aid you in arriving at the amount that you should bid?"

Mr. Adams: Same objection.

The Presiding Member: Sustained.

Mr. Fullerton: Exception. Respondent offers to prove that the witness, if permitted, would answer: "No; there was no engineers in it. We, of course, as I told you, owned half of a working interest in most of the leases, and the others we were familiar with, had them marked on our map, the acreage, and who owned them, and all. We knew what percentage of the others the Hogg Creek owned and what percentage was outside interests, and in those days we were buying a good many properties. We had our

usual formula we figured values at which, as I say, was sometimes right and sometimes wrong."

You may cross-examine.

Upon conclusion of respondent's profert of proof of the remainder of questions and answers appearing in such deposition, the petitioners expressly declined to offer their cross-examination of this witness.

Mr. Fullerton: The respondent offers the direct examination of the witness, B. H. Stephens, including the offers to prove the testimony which has been excluded; the respondent also offers the petitioner's cross-examination of B. H. Stephens; also the redirect examination. The petitioners objected to such offer.

The Presiding Member: If he does not choose to submit his own cross-examination or to offer it, does the respondent have any right to offer the cross-examination?

Mr. Fullerton: I believe he does * * *.

Mr. Davis: If he offers it as his own testimony and it must be tested by the same applicable rules of competency and relevancy as if he had elicited the answers himself.

Mr. Foley: This is the cross-examination of the witness, B. H. Stephens: "Q. Was the request of the Hogg Creek—

Mr. Adams: * * * Petitioners object to the reading in part of the cross-examination. If it is proposed to tender the cross-examination, we submit it should be tendered as taken, including the motion to strike, for the reasons therein stated * * *.

Mr. Foley: I have no objection to that.

"*Cross-examination by Mr. Adams.*

"Mr. Adams: Petitioner moves to strike the foregoing testimony of the witness for the following reasons:

"First: the testimony concerning his negotiations for property is not admissible, not being material or relevant;

"Second: it has not been affirmatively shown that the properties mentioned by the witness are in any particular comparable to the properties belonging to or in anywise concerned with the transactions had by the petitioners in this case;

"Third: there is no affirmative testimony as to the relevancy or materiality of the testimony of the witness to the issues in this cause."

Petitioners not in anywise waiving the foregoing objections, but insisting thereon, and only by virtue of the absence of a ruling upon the admissibility of the foregoing testimony proceed with the cross-examination.

"Q. (By Mr. Adams)"

Mr. Davis: May we have a ruling on the motion to strike?

The Presiding Member: Motion granted * * *.

* * * * * * *

Mr. Fullerton: Exception, please.

Mr. Foley: "Question by Mr. Adams."

Mr. Davis: I submit that the testimony in chief having been stricken out, there is no basis for the cross-examination, and I therefore move to reject that * * *. That now stands as the cross-examination of a non-existent witness.

The Presiding Member: It seems to me that is true. If it was here in the court room there would be no cross-examination, would there?

Mr. Foley: Perhaps not.

The Presiding Member: Is there any reason why we should not follow that rule in the case of depositions?

Mr. Foley: I believe the testimony is admissible, and I would like to go forward and make the offer to prove it.

The Presiding Member: Well, I think I will not receive it at this time. If I am wrong, you can later renew your offer.

Mr. Foley: We will take an exception and we would like to make a tender of proof in the record * * *.

Thereupon respondent proposed to offer proof by the several questions and answers on cross-examination appearing in the deposition, and which would have been produced except for the Board's ruling after objection by the petitioners.

It was stipulated that at any time it might be necessary for respondent to make up the record, the record may show that respondent made a tender of the cross-examination of the witness B. H. Stephens as found on pages 9 to 13 of his deposition, and that those pages might be quoted as they appear in the deposition, and that upon the tendering of that offer, the petitioners objecting, the objection was sustained and respondent excepted; also that the record may show that the respondent offered to prove the redirect examination of the witness and, similarly, the objection, denial and exception to the ruling of the Court thereon.

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T. M. Dees, a witness called by the respondent, was duly sworn and testified (upon deposition duly taken, returned and filed with the Board) as follows:

My name is T. M. Dees. I reside at Midlothian, Texas. My present occupation is banking. In 1919 I was engaged in the hardware and lumber business and in the oil business. In 1919 I was associated with the Hogg Creek Oil Company which operated under a trust agreement, and it continued in that status until after it was sold out to the Magnolia Petroleum Company. During July and August, 1919, I was president of the Hogg Creek Oil Company and acted for the company in its business affairs. It owned in the neighborhood of 4,500 acres of oil leases mostly in Eastland County around the Desdemona Field.

We acquired those leases about July and August, 1917. The leases reserved a royalty of one-eighth to the land owner and Hogg Creek Oil Company owned the other seven-eighths at the time they were acquired. Eventually Hogg Creek Oil Company sold the leases—not all at one time. The first sale was made to the Magnolia Petroleum Company of an undivided one-half of the working interest, one-half of seven-eighths interest—in approximately 3,000 acres.

Q. I show you a contract, Mr. Dees, which purports to be between the Hogg Creek Oil Company and the Magnolia Petroleum Company, dated September 18, 1918, and I ask you if that is your signature? A. Yes, sir.

Q. I will ask you to look at the contract and tell me if that is the original contract between those parties at that date? A. Yes, sir, this is it.

Q. I call your attention to the last page of the contract which purports to carry the signatures of the members of the Hogg Creek Oil Company. Can you recognize any of those signatures? A. Several of them, yes, sir.

Q. Did you have to do with the obtaining of that list of signatures? A. Yes, sir.

Q. You know that such a list of signatures was obtained for the purpose of ratifying the contract to which it is attached—as it purports to do? A. Yes, sir.

Mr. Foley: The respondent offers in evidence a contract, the original contract between the Hogg Creek Oil Company and the Magnolia Petroleum Company dated September 18, 1918, and as a part thereof the ratification by the members of the Hogg Creek Oil Company. By agreement of counsel a photostatic copy of the contract just offered in evidence may be marked for identification as Respondent's Exhibit FF (see Volume of Exhibits).

Mr. Adams: The petitioners object to the admission of the foregoing contract for the reason it has

not been affirmatively shown by the testimony of the witness that the properties covered by the contract so offered are in anywise comparable to the properties concerned with the issues in this case; and, further, for the reason that other sales and transactions are not admissible or relevant or material to any issue being tried in this case and that the same may not be offered in testimony except in connection with the testimony of a witness shown to be qualified to pass on opinion upon the properties so concerned as compared with the properties at issue in the present cause. * * * Petitioners further object to the offer for the reason that the document so offered in evidence does not disclose the valuation of the several and separate properties affected by such instrument, nor has it been shown in any manner how any or all of such properties may be comparable to any of the properties concerned in the issues in this case.

Mr. Davis: And for the further reason that the transaction occurred a year before the critical date with which we are concerned here and is too remote to furnish a standard of value.

The Presiding Member: I will overrule the objection.

Mr. Adams: Exception.

The contract which has just been offered in evidence has been carried out in accordance with its terms.

Q. Mr. Dees, I offer you a letter from E. R. Brown, vice-president and general manager of the Magnolia Petroleum Company, to T. M. Dees, dated October 21, 1919, and I ask you to examine it. Did you receive that letter? A. Yes, sir.

Q. Is it the original letter which you received? A. Yes, sir.

The respondent offers in evidence the letter of October 21, 1919, from the Magnolia Petroleum Company to T. M. Dees, which contains as a part thereof the acceptance by T. M. Dees, and by agreement of counsel a photostatic copy in lieu of the original may be marked Respondent's Exhibit JJ and filed in lieu of the original.

Mr. Adams: The petitioners object to the foregoing offer for the reason that it does not appear to be an offer for the purchase of oil and gas leaseholds; further, it does not affirmatively appear that any price offered was specifically based upon oil and gas leaseholds, nor that any oil and gas leaseholds owned by the Hogg Creek Oil Company were so situated that any valuation which might be ascribed in the foregoing offer to such leaseholds was in anywise comparable to the properties concerned under the issues in this cause; further, that the foregoing offer and acceptance is not admissible as being relevant or material to any issue presented in this case.

The Presiding Member: It is very difficult to require all the showing that you may require of a witness on the stand when he is testifying. We have felt that we would allow more leeway in the presentation of the depositions. I feel disposed at this time therefore to overrule the objection.

Mr. Davis: Without prejudice to the renewal of the objection?

Mr. Adams: Exception.*

I continued to be president and general manager of Hogg Creek Oil Company to and including October 21, 1919. I was then the active business agent for the com-

* This exhibit was subsequently stricken out on motion of petitioners. See page 1678.

pany. The contract contained in the offer of October 21, 1919, was carried out in accordance with its terms. I had to do with the carrying out of that contract. The members of the Hogg Creek Oil Company actually received the stated cash consideration. All of them turned in their stock and received in cash $10,000 per share except a few and they made me pay a little bit more; some received $11,000. I could state that they all received $10,000 because some of them received that or more.

Petitioner objected to the foregoing line of examination as not material or relevant for reasons more particularly stated in connection with the offer of the contract in evidence. The objection was overruled and exception noted.

I was closely in touch with conditions in the Desdemona Field during the first eleven months of 1919. My reason for being in touch with those conditions and the extent of my investigation or information was that we had a good many leases over there and it was my intention to sell them as soon as we could and get the best price obtainable, and I tried to keep familiar with the prices and sales in order to make a fair price for ourselves if we did sell. I visited the oil fields frequently. I conferred with others who were interested in the activity there. I investigated as much as I could as to prices that were being paid for leases and royalties during that period; I would hear of the sale being made and the price sold at through oil scouts and brokers. My company was the owner of oil leases in the Desdemona Field prior to the bringing in of the first discovery well on September 2, 1918. I was fairly well conversant with conditions in January, 1919, when the Knoles well came in about 6,000 barrel initial daily production. The coming in of the Knoles No. 1 well had the effect of causing the field to become very active, prices began to advance rapidly. I do not know whether that advance went through the whole year or not. It went part

of the year, I know. I don't know whether it continued all through the year or not; that is a broad question. My recollection is that drilling and activity increased all of the time until about the 1st of November of that year, then it seemed to reach kind of a state of rest. In my opinion, the activity in the purchase and sale of leases began to decline in the latter part of 1919—I would say during the month of November. On August 1, 1919, there were many wells being drilled, leases were selling at high prices, oil was selling at a high price. Activity in those respects was on the increase on August 1, 1919.

*Cross-examination.*

Mr. Adams: The petitioners move to strike all of the testimony so far presented by this witness for the respondent for the reason that all testimony concerning offers or negotiations for the sale of property is inadmissible, irrelevant and immaterial; furthermore, that none of the properties affected by the contracts or documents heretofore offered by the respondent discloses any relationship or basis of comparison with the properties herein at issue; and, furthermore, said instruments are inadmissible, irrelevant and immaterial by reason of the failure to disclose any allocation or distribution of valuation of any of the properties affected in any instance; further, on the ground that all such offers and transactions are irrelevant and immaterial to any issues in this case.

The Presiding Member: Except as I have sustained the objections as made to the testimony, I will deny the motion to strike the other testimony. Is that clear?

Mr. Adams: Your Honor denies the motion to the extent the exhibits have so far been admitted but grants it so far as concerns the exhibits that have been rejected?

The Presiding Member: Yes.

Mr. Fullerton: And that applies to the further testimony. The respondent excepts to the sustaining of the motion so far as it applies to the course the Board has pursued in that respect.

Mr. Davis: And we except in so far as it refuses our motion to strike.

The Presiding Member: Very well.

In connection with the agreement made between Hogg Creek Oil Company and Magnolia Company under date of September 18, 1918, the approximate quantity of acreage involved in that transaction was an undivided one-half interest in 3,000 acres for $700,000; that was the first trade. They were to select from our total acreage 3,000 acres. Our total acreage at that time was about 4,350 to 4,400 acres. We had an agreement with R. O. Harvey & Company, who were drilling the first Duke well, whereby we were to get 120 acres offset to this well. My recollection now is that when I made the trade with Magnolia, I designated it in that way; they were to have a one-half interest in that 120 acres offset.

Referring to page 1 of the agreement with the Magnolia Company—the paragraph marked "First"—it was particularly provided that the undivided one-half interest in the oil and gas leases to be sold to Magnolia was required to embrace 120 acres, composed of, first, seventy acres off the south end of the J. N. Duke tract of 240 acres on which has been drilled an oil well by R. O. Harvey & Company, which tract is to approach on its north side within a distance not exceeding 500 feet of said well, and, second, another tract of fifty acres taken off the S. T. Peake tract of 160 acres, which tract lies west of and adjoining the G. W. Knoles tract. There was no alternative with the Magnolia as to the transfer of those properties: they were specifically required to be transferred. It was a definite requirement under the Magnolia contract that we convey all of the affset acreage which we had retained under our

transaction with R. O. Harvey & Company. However, as to the remainder of the Hogg Creek properties comprising between 4,300 and 4,400 acres, the Magnolia Company was to have a selection of a half interest up to 3,000 acres. As to why the Magnolia required that 120 acres be transferred, I could say that the Magnolia insisted they have an undivided one-half interest in this offset acreage—offset against what was known as the Duke No. 1 Tex-Penn well. That would be regarded as being particularly valuable acreage according to oil man's theory that an offset lease is more valuable than any other kind because it is closer to production. The S. T. Peake lease appears to be somewhat less than a mile, boundary to boundary, from the property on which the Duke well was located. For that reason, at that stage of the development of the field, it would also be regarded as having quite a high value.

I was not present at the bringing in of the Duke No. 1 Tex-Penn well. I saw it the second day after. As to its condition as to production—it had burned down, you know. In coming in it caught fire and burned down the derrick and all, but the well was flowing and burning when I saw it. As to its probable productivity, all we could do was speculate as to the amount of oil it was producing. The well had not been completed; there was no way to make a correct estimate as to what the well would produce. It merely came in without any warning and unexpected. Several of us stood around and guessed at its probable daily rate of production; some guessed as high as 1,500 barrels, some as high as 3,000 barrels, but most of the oil men figured it would produce about 1,000 barrels. It must have been about twelve miles from that well to the nearest commercial producer in that general part of Texas, which was south of Ranger. This well would be regarded as a new discovery or as a wildcat discovery, pure and simple, a wildcat well.

Q. What was the effect of the bringing in of that well on the leasehold values in that vicinity? A. They began to sell quickly and at a higher price.

Q. Relatively, can you express it relatively how much higher? A. Before the well came in or after it came in?

Q. The price after the well, as compared with the prices before it came in. I just asked for a general answer: if you don't feel competent to answer it, I don't press. A. I couldn't give you the exact figures on that. I don't know whether that is the way you want me to answer the question. Just before the well came in you couldn't hardly sell a lease at all; just immediately after that well came in they were selling for $100 an acre, $200 an acre and $500 an acre.

Q. What was the last price? A. $500. In three days they were selling for $500, and all kinds of prices.

Q. Within what area of the well would you say that condition obtained? A. The very next day after this well came in leases could be sold within a mile of the well from $100 an acre on up.

Q. Was there a general influx of operators to purchase property in the area? A. Oh, just swarmed in that country, yes, sir.

Q. That created activity both as to the selling of leases by the land owner as well as transfers of leases already held? A. Yes, sir.

My company did not purchase any leases subsequent to the bringing in of that well. For the time being, we just retained 4,400 acres we held in that general vicinity. The general location of our leaseholds as compared with the Tex-Penn block of leases, aside from the 120 acres which I have previously referred to, was that most of our leases were practically due north from the Tex-Penn, north, northwest and northeast. They extended up to this town site of Desdemona but none inside: we didn't own any leases in the town site. Referring again to the contract

of September 18, 1918, with the Magnolia Company, that contract also provided in Article 4 for the operation and development of those properties at joint expense. Five wells were to be drilled at joint and equal expense. The money to be advanced by the Magnolia for the entire amount of the cost and the one-half payable by the Hogg Creek Oil Company to be recovered out of the production. Then all subsequent drilling beyond the five wells was to be by mutual consent or else at the risk of whichever party wanted to go ahead. That is, meaning, if they were to get one-half of the expense back from the partner, they were to get it out of production, but there was no definite or money obligation to pay unless the drilling of the well had been approved by both parties. Magnolia's obligation to pay us for that undivided one-half interest in the 120 acres near the Duke well and the 3,000 acres which they were to select out of the entire remainder of our property was fixed at 5 per cent. of their one-half of the production, and in the event the 5 per cent. of their one-half didn't pay the $700,000 within the five years, that at the expiration of five years they were to pay the difference. We were to be paid no money short of five years unless the property proved productive, then the amount of the payment was limited to 5 per cent. of one-half of the oil.

Q. At the time of making this contract, Mr. Dees, has any part of that contract set up between you any distribution or schedule of values of the various properties that were coming to the Magnolia, lease by lease? I refer to the consideration for $700,000, was it distributed, lease by lease, to all of the properties to be transferred? A. Wait just a minute.

Q. Let me make my question clear; from my examination of the contract I understand that was not done. My question is, rather, was there separately any agreed distribution of the values between your company and the Magnolia? A. No, sir.

Q. That was the point. So, in effect, it was a lump transaction on each side. You were to convey the interest in the agreed number of acres selected as determined by the contract and with the acreage having been so selected and transferred by you, you were then entitled to receive the agreed amount under the contract? A. Yes, sir.

Q. And no separate assignment of value to any particular lease? A. No.

I do not recall when we received the first payment under the September 18, 1918, contract. With reference to how much had been paid by the Magnolia to Hogg Creek Company under the September 18, 1918, contract, the only figures I could give would be approximate. I couldn't give the exact amount, not having it in my memory and no records available to which I can refer. I would say that as of October 21st, the time of making the latter agreement identified as Exhibit JJ, the offer of the Magnolia Company to purchase the stock of the Hogg Creek stockholders, that Magnolia had paid directly to Hogg Creek in excess of $200,000 under the September 18, 1918, contract. The status of that account as of November 24, 1919, which is the approximate date of the delivery of the stock of Hogg Creek Company to Magnolia Company, my recollection is that no money was paid to the Hogg Creek Oil Company between October 21st and November 28th, none at all: it was still accumulating to the credit of Hogg Creek Company, whether paid or not. I cannot produce any balance sheet or statement or specification of the assets of the Hogg Creek Oil Company as of October 21st or November 24, 1919. We delivered the entire thing, books and all, everything to the Magnolia Company.

On August 1st, 1919, the average daily production from the wells that the Hogg Creek Oil Company was interested in was in excess of 12,000 barrels per day. As to the production from the same leases as of October 21, 1919, I can't state the exact amount, but considerably less than

the figure I gave you as of August 1st, I am unable to state the exact amount. I cannot state what the production was as of November 24, 1919. The number of wells that were producing on November 24, 1919, would be more than fifty wells. I do not recall what number were producing as of August 1, 1919.

The Hogg Creek Company also had additional production in the leases within what is known as the Desdemona Field, in which the Magnolia Company had no interest. One of the companies interested with us in the ownership and operation of those leases was the Plains Oil & Gas Company, which owned one-half interest in about 1100 acres on which they had some production. I am unable to answer, with any degree of accuracy, the amount of such production as of November 24, 1919, nor as of the 1st of August, but I can answer as to the month of August. The Plains production during the month of August was 81,687 barrels of joint production for the account of the Plains Company and the Hogg Creek Company. Another company associated with us in the ownership of leases was the Humble. I don't remember exactly how much acreage the Humble had—I think about 160 acres jointly with the Hogg Creek.

Thereupon witness indicated certain tracts on the map, Joint Exhibit KK-1, along the easterly boundary of the Juana Salinas Survey, one tract being 48 acres, another 59 acres, and another 59.46 acres.

I cannot state what production was obtained from those leases as of August 1, 1919, nor as of October 21, 1919, nor as of November 24, 1919.

The Hogg Creek Oil Company did not operate any leases in the Desdemona Field entirely for its own account; all of those leases were operated either under the Magnolia contract of September 18, 1918, or contracts with the Plains Oil & Gas Company or with the Humble Oil & Refining Company, except for two or three little additional

leases with some smaller companies; however, these never amounted to very much—very small production. One of these was a lease sold to the Wyandotte Oil Company in the W. F. Stockton Survey—forty-three acres—the production was very small, the initial production of those wells was about 50 or 60 barrels; the wells were brought in in the early part of 1919. I cannot give you any idea of their production on August 1, 1919—they were all small wells, though. They held up pretty well as small pumpers. My recollection is that we sold the Wyandotte that lease for about $23,000 and retained an overriding seven-sixteenths of the production without the obligation to contribute to the drilling. They were not under obligation to pay over any contingent amount of money on this transaction. The transaction with the Wyandotte was dated about the first of 1919.

Thereupon there was presented to the witness map marked Joint Exhibit KK-1, being a map of the Desdemona area located at the approximate junction of the Counties of Eastland, Comanche and Erath, Texas. It was stipulated between the parties that the map designated is jointly offered and received in evidence for the purpose of showing the location of the lease in which the Hogg Creek Oil Company was interested, the same being shown in red, and those in which the Tex-Penn Oil Company was interested, the same being shown in green, and for no other purpose, and other data appearing on this map is to be disregarded in its consideration (see Folder of Unprinted Exhibits).

The witness thereupon made the following markings upon the map Joint Exhibit KK-1: The letter "H" on the leases previously testified to as under operation by the Humble Oil & Refining; two leases along the easterly line of J. Salinas Survey; the letter "H" with a red "X" on two tracts also operated by the Humble located approximately one-half mile west of the northwesterly corner of

the Tex-Penn block; the letter "P" as to any lease acreage that was under contract to the Plains Oil & Gas Company; the letter "W" on an irregular tract adjoining the northerly line to the westerly side of the area marked in green indicating a tract sold to the Wyandotte Oil Company.

The tract sold to the Wyandotte Oil Company is the one, as previously stated, on which small wells were completed. I have marked with the letter "P" indicating leases under contract with the Plains, ten leases, but that is not exactly correct, there may have been additional tracts under that contract that I am not able to locate. One of the areas marked with the letter "P" appears at the extreme southeast corner of the area marked in red, less than a quarter mile distant from the north central area marked in green. Another tract marked with the letter "P" appears approximately one mile to the west of the last-mentioned Plains tract. The other Plains tracts are a considerable distance from any of the area marked in green on this map. Measuring from the Duke discovery well these other tracts would run from one to three and one-half miles distant.

The map, Joint Exhibit KK-1, is fairly accurate, about as accurate as any of the field maps that you have, in showing all of the acreage with which the Hogg Creek Oil Company commenced business and as to which the various contracts with the Magnolia, Humble, Plains and Wyandotte were made.

The maximum production of the Hogg Creek Oil Company at any time from its undivided one-half interest in the leases under contract to all outside companies was at the peak on August 23, 1919, in excess of 15,000 barrels per day. Production was first obtained on the Hogg Creek properties in the latter part of 1918 on the Duke-Magnolia-Hogg Creek lease—the seventy-acre tract offsetting Tex-Penn No. 1. Its initial production was about 400 barrels

drilled in in January of 1919. I cannot remember what the production of that well was on or about August 1. The next well of the five to be drilled under the Magnolia contract was on the Duke tract, but I can't tell which one.

The area that was most intensively drilled by the Magnolia Company was the W. M. Echols and C. T. Terrell and the territory immediately south of the Town of Desdemona. The distance between the boundaries of these leases and the most northerly lease of the Tex-Penn was from three-quarters of a mile to one mile. That area was most actively drilled about the 1st of May, 1919, about five or six months subsequent to the bringing in of the Duke No. 1 Magnolia-Hogg Creek well.

Q. How did the production obtained in that area compare with that obtained in the Duke area as to size of wells? A. They were much larger in production.

Q. How did the production from the wells in that area stand up? A. Well, these wells were very uniform in production for the first thirty days and then decreased rapidly after that.

Q. You are speaking now of the wells nearer the town site? A. Yes, sir.

Q. Was the same characteristic apparent in the wells on the Duke lease? A. Yes, sir.

Q. How many wells in all were drilled on the Duke lease by the Magnolia-Hogg Creek interest? A. I think it was four; I am not sure about that, however.

Q. That was a seventy-acre lease? A. Yes, sir.

Q. Would four wells fully drill up that area? A. No, sir.

Q. Were there many locations within that lease remained undrilled? A. Yes, sir.

Q. The area you speak of near the Town of Desdemona, was it more extensively drilled than the area down around the Duke? A. Yes, sir.

I don't remember the exact number of wells drilled on the Terrell or Echols leases and have no records in my possession from which that could be ascertained. The records were delivered to the Magnolia Company.

Q. Do you recall whether the production on the Duke area declined at approximately the same rate as it did in the more northerly area? A. Well, I didn't pay so much attention to the wells on the Duke as I paid to some of these larger wells. We hadn't drilled wells very long in that area until we learned the field was very spotted. For instance, an offset well would be ten times as large as its offset, more than ten times, some would be twenty-five times as large. It was a very spotted field.

Q. Sometimes conversely, when you had a good well, the offset to it would be— A. Almost a failure.

Q. What? A. Almost a failure.

Q. You have testified concerning the character of the field being somewhat spotted and uncertain from location to location? A. Yes, sir.

Q. I inquire whether, in your opinion, that was more marked in one or more areas, that is, the Duke-Magnolia-Hogg Creek lease of seventy acres, or up in the area near the town site to which you referred? A. No, sir, it wasn't any more pronounced.

Q. It was not more pronounced? A. No, sir.

Member Van Fossan: May I interrupt to inquire if the marking on the map, the double cross, shows the territory involved in the Magnolia-Hogg Creek transaction?

Mr. Adams: If I may explain to the Court, the map as presented had been colored, and the witness Dees had already identified it as being substantially drawn from the Magnolia and Hogg Creek deals. The another witness later marked the map, I believe the first two parallel lines, with green, to indi-

cate the first Magnolia-Hogg Creek transaction of September 18, 1918, when it acquired an undivided one-half interest in certain of the Hogg Creek leases.

Member Van Fossan: Will you state that again?

Mr. Adams: The marks made by another witness, Mr. Sinclair, whose deposition appears later, by the use of two green lines, indicating such of the leases marked in red on the map as were affected by the first Magnolia-Hogg Creek deal of September 18, 1918, I think Exhibit FF——

Mr. Fullerton: Yes.

Mr. Adams: The first of the documents already admitted. Then he later marked with purple parallel lines over the green lines all of the leaseholds owned by the Hogg Creek Oil Company at the time, November 24, 1919, or at the time of the acquisition of all of the stock of the Hogg Creek Company by the Magnolia, referred to as the second deal.

Member Van Fossan: All of the territory which is marked with a double purple line is the territory involved in this second transaction?

Mr. Adams: No; it would be involved in both transactions.

Member Van Fossan: Both transactions?

Mr. Adams: Yes; and that marked with a purple line alone was not involved in the first Hogg Creek transaction. I believe there is no marking in green alone that is not involved in the second transaction; there may be one or two, however. That area which is colored by the double marks was an asset of the Hogg Creek at the time of each of the transactions.

Member Van Fossan: What does the large letter "P" indicate?

Mr. Adams: That was made by the witness Dees; this witness, as indicating the leaseholds in which an undivided one-half interest was conveyed to the Plains Oil Company under the contract of October, 1918, and which was not—as to which an undivided one-half interest was not acquired by the Magnolia under the first deal.

You see, the Magnolia, under the first deal, selected two so-called offset areas near to the Duke discovery well. The Duke lease and the Peake lease. Then they selected 3,000 acres out of approximately 4,300 acres or 4,400 located—owned by the Hogg Creek at the time of the bringing in of the Duke discovery well by the Tex-Penn. That left upwards of 1,000 or 1,200 acres owned by the Hogg Creek as to which they had made no contracts.

Member Van Fossan: That constituted the first transaction?

Mr. Adams: Yes; the selection of the 3,000 acres, plus the two offset tracts, as to a one-half interest in all of them—that was the first transaction and was a conveyance directly of an undivided one-half interest in the leaseholds under the contract, and against the contingent payment of the sum of $700,000, out of 5 per cent. of one-half of the gross production.

Mr. Fullerton: May I ask that counsel correct the last statement, that it was a contingent payment? It was a deferred payment.

Mr. Adams: Yes, sir; it was rather a deferred payment, contingently payable in at least short of five years, dependent upon the rate of production.

Mr. Fullerton: It might aid the Board to know, in addition to those facts, that between the time when the Magnolia bought one-half of the 3,120 acres from the Hogg Creek, the Hogg Creek Com-

pany sold a one-half interest in most, if not all, of the 1200 acres to the Plains and the Humble, and so on.

Mr. Adams: That is correct.

Mr. Fullerton: So that in the second Hogg Creek transaction, the Magnolia acquired a one-half interest in approximately 3,120 acres, when it already owned the other one-half; and it acquired a one-half interest in the 1200 or 1300 acres that the Plains and the Humble had a one-half interest in.

Mr. Adams: There is one further qualification that will develop in the testimony, and that is, that there are certain areas originally marked in red on the map which had been lost through compromise of litigation, or otherwise, by the Hogg Creek Company by the time we come to the second deal, or shortly thereafter, but that is not material to the general picture at present. It does, however, come up at a later point.

I am not certain that I made clear to the Court the picture. If we looked at this acreage, this red acreage, it substantially represents the Hogg Creek Oil Company's holdings at the date the Duke-Knoles No. 1, Tex-Penn well came in, and thereafter, upon the dates which have been presented here.

The Presiding Member: The point I am not clear on, although I seem to have asked about it before, is this: Whether this October, 1918, transaction was the one wherein the Magnolia secured the shares of stock.

Mr. Adams: This Magnolia-Hogg Creek transaction was the one whereby, under the contract of September 18, 1918, it contracted to acquire an undivided one-half interest in certain leaseholds owned by the Hogg Creek Company out of the ag-

gregate of some 4300 or 4400 acres, and it contracted to acquire an undivided one-half interest in two offset tracts against the Duke well; and in their selection of up to 3,000 acres additional, whatever they might choose to select, they selected all of the acreage marked in red; and there was a conveyance not of stock but of an undivided one-half interest in the leasehold.

The Presiding Member: Is that true also of the interest acquired by the Plains Company?

Mr. Adams: That is true of the Plains Company on substantially similar contracts, but, of course, different amounts were paid.

The Presiding Member: Did the Magnolia Company then have any stock interest in the Hogg Creek Company after that period?

Mr. Adams: After that period, no.

The Presiding Member: Or did it acquire the stock interest in the later transaction?

Mr. Adams: Yes, under date of October 21, 1919: but this was treated—it became effective and was treated by the Magnolia Company as having transpired on November 24, 1919.

Mr. Fullerton: The particular point in the latter transaction to which we wish to call your attention is the fact that the Magnolia Company agreed by that contract that, if the Hogg Creek could not obtain all of the stock for delivery to the Magnolia, the Magnolia would purchase the physical properties of the Hogg Creek for the aggregate that was to have been paid for the stock.

Mr. Adams: The petitioners are not in entire agreement with Mr. Fullerton's construction of that, but it appeared by the contract and can be appropriately discussed when we come to it.

Q. Do you recall the initial production found in the Magnolia-Hogg Creek Duke wells Nos. 2 and 3? A. No, sir, but my recollection now is Duke No. 2 and No. 3 were both small wells.

Q. In your opinion, that probably accounted for the fact no additional wells were drilled in that tract? A. Yes, sir.

Q. I call your attention to another tract adjoining the Tex-Penn leases, marked in red, somewhat to the west and a little south of the Magnolia-Duke lease, known as the S. T. Peak lease. Were any wells drilled on that lease that you know of? A. I don't remember.

Q. You do not recall that there were? A. No, sir.

Q. Do you know why? A. My recollection now is that particular part of the territory has been condemned, in a manner, by dry holes.

Q. Can you give us a little more detail on that? A. When this field was first opened with the Duke well making about 400 barrels——

Q. You refer to the Duke-Tex-Penn well? A. The first Duke well, yes, sir, the Duke-Tex-Penn well. Most of the excitement, of course, was around this well. That was the first part of the field that was drilled rapidly. It proved to be spotted, and drilling, in a manner, didn't exactly cease, but drilling checked up. Along about the 1st of May, when the Hogg Creek and the Magnolia drilled in the C. T. Terrell, at that time——

Q. That is located close to the town site of Desdemona? A. Yes, sir, about a mile and a half north of the discovery well—that was the largest well then of any of them. Then that excited drilling again and everybody went to work drilling all over the country.

Q. You mean all over the north country or the south country with respect to the Tex-Penn area marked on the map before you? A. The tendency was to be north of the

discovery well and west and east; northeast and west of the discovery well, due to the fact this was a big well on the C. T. Terrell, and the oil men would get in as close as they could, and if they couldn't get real close they would take farther away. Most of the drilling was to the north and the northwest and west of the discovery well.

When the Knoles well was drilled, which is almost an offset to the discovery well, it proved to be an extra large well, and it was the one that really caused most of the excitement in this territory, and not the Duke. The Duke was known by all oil men to be a small well, but when the Knoles well was drilled, it was extra large for that territory and was the one that gave the field a big boost, and then there was a lull in this drilling until the Terrell was brought in.

After the Terrell No. 1 was completed in the first part of May, 1919, Magnolia drilled five or six other wells on that lease, all fairly good wells. After that the Hogg Creek-Magnolia Company prosecuted the drilling of the remainder of the jointly held acreage lying to the west, north and every other direction from the Terrell well. There was no resumption of the drilling by them at that time on the Duke lease. There was no renewal of the drilling on the Peake lease to the south of the Duke.

The Humble had begun intensive development of their three tracts lying a mile or so west of the Terrell soon after the completion of the first Duke well. They did not obtain substantial production in those wells; none of them large wells, although quite a number were drilled. It was from those wells that the production I mentioned as amounting to slightly over 81000 barrels for the month of August was obtained. They obtained no substantial production of any of the Hogg Creek-Humble leases lying to the west which I marked with a red "X" on Exhibit KK-1. Two wells were drilled, one a small well and the other a gasser. Plains Oil & Gas Company commenced operations

on their acreage jointly owned by the Hogg Creek in the latter part of 1918. First production was obtained on the J. D. Harrington in the southeasterly corner of the area marked in red on the map marked KK-1; that is the farthest well south close to the Duke. No large wells were obtained on that lease. Five or six, perhaps more, were drilled. Plains obtained its most substantial production upon any of the jointly owned Hogg Creek acreage on this Herrington tract. First well was drilled in the extreme southeast corner. A small well was obtained upon the Hogg Creek-Plains leases lying approximately a mile and a half west of the Tex-Penn leases. Perhaps more than one, I don't remember, but they were small wells. I don't recall the initial production. The Plains Oil & Gas Company contract with Hogg Creek was practically the same as the Magnolia contract as to terms and payments. The amount of consideration ultimately to be paid was $250,000. The Plains Oil & Gas Company never completed those payments to the Hogg Creek Company. Why? They never did get enough production. I do not recall the approximate amount that they did pay because all of the records were turned over to the Magnolia Company when we sold out.

Our arrangement with the Humble Oil & Refining Company as to jointly owned acreage was, according to my recollection, a purely fifty-fifty contract. As I testified before, after bringing in the Tex-Penn Duke No. 1 well, there was a rush of operating companies and lease buyers into that area for the purpose of taking leases. As to how long that activity continued, everything was very much exited for a while, and when the Knoles well was brought in the excitement continued then and then the excitement subsided for a while when some of the smaller wells were brought in on the Duke and some other leases immediately north on the Tex-Penn block; then the one the Plains Oil & Gas Company drilled in on the J. D. Herrington in the

extreme southeast corner of the area marked in red on map KK-1.

Q. Did that well cause any resumption of activity? A. No, sir; with the drilling of that well the excitement subsided some.

Q. How is that? A. That was almost a dry hole; maybe about 200 barrels initially.

Q. Let me get this clear. I thought you were referring to the Plains well in the immediate southwest corner of the area marked in red on Exhibit KK-1, and I thought you stated that was a producer? A. Yes, sir.

Q. Where was the dry hole located to which you last referred on the Plains lease? A. I said the original well on the Herrington was almost a dry hole. The initial production was 200 barrels, but it didn't hold up any time.

Q. Where was that well located on the tract? A. In the extreme southeast corner.

Q. Where was the initially good producing well on the Herrington tract? A. There wasn't any.

Q. I am sorry I misunderstood your testimony on that. A. There wasn't any real good well on that lease.

Q. I see. A. Awhile ago I mentioned that field was very spotted. Here was an enormous well on the W. N. Echols——

That is the tract in the westerly part of the D. W. Funderberg survey lying on the bank of Hogg Creek and somewhat less than a mile north of the northwest corner of the Tex-Penn block. That Echols well was the largest well ever drilled in that field, I believe, completed June 16, 1919. Following the drilling of the C. T. Terrell well in the easterly part of the Funderberg survey there was very substantial activity in that immediate vicinity extending up into what is known as the town site of Desdemona, which occupied the greater portion of the W. H. Funderberg survey. There was extensive drilling in the town lot area. Most of the wells obtained there were good wells;

large producers of oil. There was also rather intensive drilling around the Terrell lease of the Magnolia-Hogg Creek Oil Company; in all directions surrounding it. The wells were generally regarded as large producers of oil. The body of the production appeared to extend from the Terrell lease westerly in the direction of the Echols Estate lease lying west of the W. M. Echols lease. It went north and west and some south. There were wells all around the Terrell well that were good. It might be said the D. W. Funderberg was the center, or the approximate center, perhaps with the W. H. Funderberg survey immediately adjoining it on the north, of a very intensive drilling campaign following the drilling of the initial well on the Terrell lease on the Magnolia-Hogg Creek lease in May, 1919. Up to that date the production was the largest in that area of any of the wells or sections that had been drilled up to that date. Later there were other large wells brought in on the W. R. Carruth 160-acre tract in the A. Smelzer survey. This area lay approximately three to three and one-half miles west of the town site of Desdemona. As to whether production was continuous westwardly from the town site to the Carruth lease or there was some break in productivity in the intervening acreage, I would say there were many light wells between the Funderberg survey and the Smelzer survey. At the time of the sale of the stock of the Hogg Creek Oil Company to the Magnolia Petroleum Company in November, 1919, the greater portion of the production then accruing to the interest of the Hogg Creek Oil Company was produced in the areas that I have referred to as the D. W. and W. H. Funderberg surveys around the town site and in the W. R. Carruth area in the Smelzer survey to the west. I don't remember what the production was at that time from the Magnolia-Hogg Creek Duke lease of seventy acres lying down in the Tex-Penn block, but it was small. No production was obtained at any time from the S. T. Peake lease.

Exhibit JJ, the letter dated October 21, 1919, from the Magnolia Company to our company, represents the next trade or dealings we had for disposition of the Hogg Creek Oil Company properties. This negotiation contemplated a purchase of all outstanding shares (600 shares) of the Hogg Creek Oil Company with the limitation that there should be no distribution of dividends or change of assets between the dates of the agreement and the date of the settlement of the transaction. As to whether there were substantial assets of the Hogg Creek Company separate and apart from its leasehold interests and leasehold improvements, such as drilling equipment, wells, etc., I would state the Magnolia owed the Hogg Creek Oil Company quite a sum of money at that time, I don't recall the amount, but Plains Oil & Gas Company owed the Hogg Creek Oil Company some. That was practically all the assets except the leases and equipment thereon. There was no designation, allocation or distribution of the valuation to the leaseholds, lease by lease, in connection with this transaction. We didn't sell the Magnolia property. We sold the Magnolia stock certificates.

Q. In your testimony of yesterday you stated that the drilling activity in the Desdemona Field continued quite actively until the month of October or November, 1919. Isn't it a fact that the leasehold trading—the lease trading, buying and selling and the taking of leases, would have ordinarily been concluded considerably ahead of the period of drilling? By a considerable period I mean perhaps three to four months? A. I hardly say so long, but the activity in lease selling had passed probably three or four months.

Q. As to the areas where that activity was being carried on, would you say that leasehold buying activity was closely associated, in location of properties, with areas in which the drilling was going on and where the larger wells had been discovered, say, for instance, in either of the

Funderberg surveys near the town site, and at a little later date near the Carruth lease in the Smelzer survey? A. Yes, sir.

Q. Ordinarily the lease buying follows the excitement of oil production? A. Yes, sir.

Q. It moves pretty rapidly for a limited period of time until all of the leases are taken up, does it not? A. Yes, sir.

Q. It tends to concentrate in the hands of the larger operators, also, does it not? A. Yes, sir; of course, many leases are resold——

Q. Resold? A. —on speculative value.

Q. The heat of activity usually comes most intensively after the discovery of oil in a particular area? A. Yes, sir.

Q. The closer the well; the more the excitement? A. Especially if the well should show it is going to be a steady producer.

Q. Conversely, if the wells are disappointing, either dry or very small production, there is almost a complete lack of interest in lease buying and selling? A. They decline rapidly in price.

Q. In the two areas you have mentioned, which we will term the town site area and the Carruth area, the wells drilled in there, coming in in May in the town site area and later, perhaps, in the Carruth area, we find most of the lease buying activity centered in those areas, do we not? A. Yes, sir.

Q. Particularly in the town site, where the tracts were small, town lots? Is your answer "Yes"? A. Yes, sir.

Q. All right. Would you say, Mr. Dees, that the rapid decline which was found to occur in many wells in this field had any effect on the leasehold valuations and the price paid for leases? A. In many instances, yes.

Q. What was that effect? A. Well, every time somebody would bring in a big well the leases would go up. If the

wells were failures, the leases would go down. As I stated to you before, the field proved to be spotted. Nobody knew when he had a good lease.

Q. Also, if he had a well that came in for a good volume of production and it declined rapidly, that would cause an immediate effect in the valuation of the leases surrounding it? A. Yes, sir.

*Redirect examination by respondent.*

Immediately after the coming in of the discovery well on the Duke lease, on September 2, 1918, there was activity in obtaining leases. Larger oil companies were in the market for leases at that time. Many others were in the market for leases. The territory in the vicinity of the Duke lease was mostly leased up for oil drilling. They were taking leases six, eight or ten miles from the discovery well. The large oil companies got a substantial amount of the leases within five miles of the discovery well. I believe more than half of the territory went into the hands of the large companies by the 1st of March, 1919. The bringing in of the Knoles No. 1 further excited activity. That was a very large well. As to where the activity was the most intense in this area just after the Knoles No. 1 well came in, that is where the most wells were being drilled and the greater number of leases being purchased at the higher prices. I would say it was immediately around the Duke well and the Knoles well, as near as they could get. Most of this territory was taken up by the R. O. Harvey Company and the Hogg Creek Oil Company. The Tex-Penn acreage was originally in the name of R. O. Harvey. It afterwards went into Tex-Penn. The Duke No. 1, which was the discovery well, and the Knoles No. 1 well were both well toward the north of the Tex-Penn block. The Hogg Creek properties were most of them in a northerly direction from the Tex-Penn

properties. As to whether the Tex-Penn properties were in a compact block or scattered, I would say they were in pretty good condition from an oil man's viewpoint. They were pretty well blocked up. The Hogg Creek property was more or less scattered. It would be necessary for the Hogg Creek people to drill offset wells; we had a great deal to contend with on account of gaps in the leases, a good many vacancies. We were forced to drill a good many offsets. Had the block been solid we wouldn't have had so many offsets to drill. The necessity for drilling offset wells increases drilling activity because an adjoining landowner requires a lessee to drill and save his oil. I think the Tex-Penn was at an advantage under those circumstances in having this acreage in a compact block. As to whether in my opinion that would explain to some extent the activity in drilling just north of the Tex-Penn acreage with the greater number of wells than were drilled in the Tex-Penn acreage, I would say that the territory lying north of the Duke discovery well, coming into hands of many owners, of course, made drilling activity greater. After the Terrell No. 1 well came in, which was the largest well after the Knoles No. 1, there was intense drilling activity between the Terrell well and the Tex-Penn properties; there was some drilling activity on the east of the Tex-Penn properties, but not such a great deal. To the west and the north and northwest there was more activity as of August 1. I would say the greater portion of the drilling activity as viewed from the Tex-Penn properties was from one to two miles north—north, from half a mile to two miles north. Prior to August 1, 1919, there was drilling all around the Tex-Penn properties, but the great bulk of the drilling was to the north and west, and on the north the most intense drilling was from half a mile to two miles north of the Tex-Penn properties.

On August 1st, 1919, the greatest activity in the purchase and sale of leases was immediately surrounding the Desdemona town site. I don't believe I can answer independently the question as to whether the activity extended as far south as the northern boundary of the Tex-Penn oil property. There was some activity over to the west, in the Smelzer survey, on August 1, 1919. Leases were being drilled and leases bought and sold all over this territory two and three and four miles west of the town site. The well I mentioned in the Smelzer survey came in in the latter part of 1919. There was production over there by August 1, 1919, but I can't name the wells or amount of production in them. My recollection is that the activity became intense in that vicinity after August 1, 1919. As to whether my answers on cross-examination which mentioned the dates when wells were brought in and like matters were from my personal recollection, I say some of the dates I recollect distinctly, others I did not.

*Recross-examination by Mr. Adams.*

Q. Mr. Dees, referring to your reply to Mr. Fullerton's questions with respect to offset drilling and the necessity therefor, is it not a fact in oil field practice that offset drilling arises from two sources: first, voluntary desire of the operator to develop his own property, and, secondarily, the involuntary action of the operator or lessee who drills his property in response to the demand made from his royalty owner that the property be developed and his oil saved, as you mentioned in your testimony? * * * A. I better answer that "No."

Q. Isn't it a fact— A. I have got to supplement that answer in this way—amend it in this way: When an oil company leases a block of acreage, the more solid it is the more desirable it is, because it saves a great deal of expense in drilling offset wells. That is all.

Q. Ordinarily is the operator not free, before there is any development in the area, to drill or not to drill in the absence of some contractual requirements? A. Under the term of the Texas leases, the way they take them now, most of them are taken for five years and pay a rental. The owner of the lease wouldn't be forced to drill that lease unless he so desired unless he was forced to by an offset from somebody else.

Q. Assuming the situation where an offset well has been developed and production obtained, the operator faces a situation that that well may withdraw the oil from under the land upon which he has a lease? A. Yes, sir.

Q. So, both the lessor and the operator have an interest in seeing that well drilled and their oil brought out of their own land? A. Yes, sir.

Q. I believe you—in your experience you can say, even if the operator be unwilling ordinarily to drill, or dilatory, the landowner has the right to compel the drilling of the well on his property to offset the productive well on the adjoining property? A. Yes, sir.

Q. It is that type of well that is ordinarily termed the offset well? A. Yes, sir.

Q. The operator may, however, never have heard any protest from his landowner, but once the well is brought in on an adjoining lease proceed post haste to drill his own well, may he not? A. Yes, sir.

Q. If you had before you a situation such as you saw in the Tex-Penn block of acreage, as depicted on KK-1, marked in green, that indicates, does it not, as to this map, the Tex-Penn is the owner of leases upon each of several tracts in that area? A. Yes, sir.

Q. As to particular tracts, there may exist entirely different royalty owners or lessors? A. Yes, sir.

Q. So, for illustration, from the Duke tract, which appears in the H. & T. B. survey in Comanche County: With the drilling in of the Duke No. 1 well, as appears in this

case a productive well, it immediately became the interest both of the lessor and the owner of the lease in the G. W. Knoles tract to offset the well by drilling there? A. Yes, sir.

Q. The operator, notwithstanding he owned the oil and gas lease on both the J. N. Duke and the G. W. Knoles tract adjoining, wouldn't be at liberty to sit by and fail to drill an offset on the Knoles tract against the producing well on the Duke tract; is that correct? A. He could be forced to drill the Knoles.

Q. He could be required to? A. Yes, sir.

Q. So, the common ownership of the lease on two adjoining areas of land wouldn't change the obligation to drill offset wells? A. It would to this extent: the owner of the Duke tract and the owner of the Knoles tract being the same, they wouldn't purposely drill extra wells and force themselves to drill offsets.

Q. You mean had the northern boundary been cut up in four small tracts abutting against the Duke— A. Yes, sir.

Q. —those leases owned by four separate operators, there might have been four wells drilled in there? A. Yes, sir.

Q. Whereas, since one concern owned it, they elected to drill two wells? A. Yes, sir.

Q. The obligation rested, under those circumstances, due to the decision of the owners of the lease to proceed, rather than at the demand of the landowners— A. They had complied with all of the demands the owner of the land could ask them for under the law. Under the law, the owner couldn't ask for more.

Q. But, as you state, if that ownership had been split in four small tracts and owned by four separate concerns, and each elected to drill, then it might have created a different situation with respect to the obligation of drilling on the Duke lease? A. Yes, sir; had those four wells been

producers, whoever owned the Duke tract on the north would have had to answer each of those offsets.

Q. The only difference in the picture being that, owning the lease on both sides of the boundary, the operator was able to develop and to drill in a more orderly manner? A. Yes, sir.

Q. The decision to drill the well, then, in respect to the operator's position in the matter, would be dependent on whether or not production was obtained in a given well? A. Yes, sir.

Q. If no production was obtained, there would then exist no duty in respect to the landowner to drill an offset well? A. No, sir.

Q. So, when you testified previously the acreage of the Hogg Creek Oil Company, or the leases in which it had an interest, as depicted in red on Exhibit KK-1, as more broken and having more irregular boundary lines, you had in mind the abutting owners around those various boundary lines were the holders of smaller tracts of land and you were at the risk of each one of those holders of a small tract drilling a well which you would be compelled to offset? A. Yes, sir.

As of August 1, I am not familiar with the result of the drilling in the half mile zone south of the active area around the town site and the northern boundary of the Tex-Penn acreage. I am not familiar with the result of the drilling within and along the northerly boundary of the Tex-Penn block.

Q. You refer to the drilling activity south of the Tex-Penn block as having existed prior to August 1, 1919. Was that not, in fact, Mr. Dees, one of the first areas of activity after the bringing in of the Duke well, the area to the south and perhaps southeast of the Duke-Knoles block, depicted in green on Exhibit KK-1? A. My recollection is south of this well was considered the best and sold the quickest.

Q. Immediately after bringing in the discovery well, Duke No. 1? A. Yes, sir.

Q. The drilling began immediately, or shortly after the bringing in of the discovery well, Duke No. 1, in September, 1918? A. Yes, sir.

Q. What was the results, if you know, of the drilling in the territory to the south and the southeast of the Duke-Knoles block? A. South and southwest?

Q. South and southwest. A. The wells were all small and dry.

Q. What was the effect of that drilling result on the valuation of acreage and leaseholds in that vicinity? A. It turned activity north.

Q. And caused a cessation to the south and the southwest; or, put it this way, a depreciation in what had been believed to have been the values there? A. As I stated before, we soon discovered that the field was spotted and no one could tell what kind of a well he was going to get when he started drilling, because you could bring in a good well right in the midst of a lot of dry holes.

Q. After a number of small producers were developed over the area south and southwest of the Tex-Penn block, that area was then condemned by operators, was it not, as dry hole territory? A. That was seven or eight months after the discovery well came in.

I was in charge of the marketing of the production of oil and gas of the Hogg Creek Oil Company. I don't believe there was any market outlet for the gas in the Desdemona Field at or prior to August 1, 1919. There was no gas trunk lines into the field drawing supplies of gas. While my recollection is faulty on the date, we put in casing-head gas plants and saved our gas—extracted gasoline. We used the residue gas for drilling purposes on our own lease. For awhile we derived no revenue from this gas.

Q. If a well had been brought in anywhere near the Knoles well producing gas, no oil, the operator had no prospect of a producing revenue to be derived from that gas? A. No, sir, not until the gas lines connected up with him, that well was practically worthless.

It was stipulated between the parties by their respective attorneys that all the questions and answers (admission whereof was denied by the Board), beginning with line 22, page 18, to line 19, page 25; beginning with line 12, page 46, to line 7, page 58; beginning with line 27, page 114, to line 12, page 117, and beginning with line 6, page 122, to line 7, page 128, of T. N. Dees' deposition, together with Respondent's Exhibits HH and II, marked for identification, relating to the White-Weld contract, may be in the record by reference only for the purpose of showing activity in the field [Tr. pp. 2176-2184].

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L. S. SINCLAIR, a witness called in behalf of the respondent, was duly sworn and testified (upon deposition duly taken, returned and filed with the Board), as follows:

My name is L. S. Sinclair, residing at Dallas, Texas. I am assistant treasurer and comptroller in charge of the accounting of the Magnolia Petroleum Company and I have been with that company since 1914.

Thereupon the witness examined Respondent's Exhibit FF, the agreement between the Hogg Creek Oil Company and the Magnolia Company for the sale to the latter of approximately 3,000 acres of leases.

That contract was carried out in accordance with its terms. The books of account of the Magnolia are kept under my supervision. In regard to cost accounts, those which have to do with the field drilling costs, under the

method used in 1919, the expenditures fall largely in three groups: Labor performed by employees regularly on the payroll, paid twice a month; second, expenditures made for materials—distribution is made from invoices direct to the various accounts; and, third, materials currently kept in the warehouse or supply yards of the company—distribution is made from material transfers prepared by the field employees handling the material. All of this data as it reaches the general office of the company is passed on to the various books and records that are kept analyzing the expenses and flat charges to the various properties or leases involved. I have with me copies of the annual financial statements as of December 31, 1919, which was prepared to show the operations of that year. They are a part of our system of accounting. In the financial statements that I have with me the total cost of wells are disclosed in two places in the statements, part in one place and part in another. The first place in this statement where such costs are disclosed shows the cost of all equipment, such as pipe, casing, derricks, etc. At the other place it discloses what I call intangible development expenses, such as fuel, labor, repairs, hauling, etc., incident to the drilling of a well, which it was the custom of the Magnolia Petroleum Company to charge for operating expense as incurred. Included in this second item is the proportional part of administrative and overhead expense. It does not disclose an allocation of taxes. It includes the actual taxes which were paid upon the drilling equipment used in the drilling of those wells. It includes a share of the warehouse expense. It includes no share of depreciation. The figures appearing in these financial statements were made from vouchers, orders, etc., previously mentioned, by the accounting department of the Magnolia Company under my personal supervision. I have had to do with the cost accounting for about fifteen years. The

computing of the cost of drilling oil wells has been done under my supervision. I don't do it personally.

(By leave, at this point cross-examination was had as to the qualification of the witness.)

*Cross-examination.*

In the charges so compiled there were included taxes on the drilling equipment, but no taxes upon account of leasehold ownership. The charges are all made against the well, which is identified by lease name and number. When the well is completed that record is then analyzed and the elements of expense are charged to expense and the elements of plant accounts or investment are charged to permanent investment or plant account. No attempt was ever made to keep operating expense or producing wells as individual units. The cost of drilling, as it is commonly called, was kept by individual wells. No effort was made to allocate overhead expense to individual drilling wells. This stopped at the operation of the drilling tools of that district as a unit and the number of feet in each well was used as a basis of pro-rating to the individual wells themselves. The expense for men that worked not upon one lease alone but generally over a whole area were classified as district general expense and those expenses were pro-rated to the individual leases on the basis of footage drilled. All direct expense incident to the drilling of wells by company owned and operated tools were charged to an account known as drilling tools expense. In addition to this, a proportion of the district general expense and other general administrative and overhead expenses were also charged. The individual wells were charged for drilling on the basis of so much per foot, but which were fixed and determined according to the prices that were paid in each area to contract drilling, and this charge per foot is the item which is reflected in the cost for drilling wells, in addition to the items which

are commonly paid by the lease owner, such as clearing site, erection of derrick, water, fuel, etc. The charges which I have just described cover, as is commonly described, services which would be rendered by a drilling contractor if you are contracting the drilling of a well instead of having it drilled by company-owned tools. Our records and this statement do not reflect and do not purport to reflect actually the exact cost of drilling any one well. There is not reflected in our drilling cost record any charge for construction or maintenance of warehouse plants or facilities. There is no item for depreciation upon account of property employed in the drilling of a well, whether temporarily used or left as a permanent improvement. This cost record does not include any charge for title maintenance or defense. Expenditures in defense of litigation or in settlement of litigation in the Desdemona District was not reflected in these costs.

*Continued direct examination by respondent.*

I cannot state the cost of the drilling of any particular well in the Desdemona Field in the year 1919. I can only testify what our books show as to the cost of drilling on a certain lease in that field and in that year. The statement I have before me does not purport to show the operation in any further detail than the operation of the district as a whole. It does purport to show the average cost of drilling in the district per well. That average cost of the Desdemona Field in the year 1919 was as follows: Comanche District No. 1 consisted of all the leases in which the Magnolia Petroleum Company had acquired an interest from the Hogg Creek Oil Company; Comanche District No. 2 consisted of all other leases in that district. On this summary it appears that on the leases acquired from the Hogg Creek Oil Company there had been drilled and completed during the year 1919 thirty-nine wells. The total

cost of these wells appears to be $733,776.70, or an average cost per well of $37,629.57. On the other leases in this area identified in this summary as Comanche District No. 2 a total of three wells at a total cost of $110,022.30, or an average cost per well of $36,674.10. I am not certain, however, that this figure includes the intangible development cost of which I have already spoken. I am uncertain as to whether it is supposed to include the total cost of the well or only the physical cost of development, which was capitalized. I believe the wells so referred to were all within the area reflected in Joint Exhibit KK-1 which you have shown me.

The witness identified photostatic copies of the following instruments:

An assignment dated December 31, 1918, by Hogg Creek Oil Company to Magnolia Petroleum Company, marked Respondent's Exhibit MM (see Folder of Unprinted Exhibits).

Supplemental agreement dated December 31, 1918, between the Hogg Creek Oil Company and Magnolia Petroleum Company, marked Respondent's Exhibit NN (see Folder of Unprinted Exhibits).

An assignment dated September 20, 1920, from Hogg Creek Oil Company to Magnolia Petroleum Company of certain properties in Comanche County, Texas, marked Respondent's Exhibit OO, and an assignment of the same date of certain leaseholds situated in Callahan County, Texas, which is marked Respondent's Exhibit PP.

An assignment dated September 20, 1920, from Hogg Creek Oil Company to Magnolia Petroleum Company of certain leaseholds in Eastland County, Texas, which was marked Respondent's Exhibit QQ.

Mr. Fullerton: The respondent offers in evidence the photostatic copies of the instruments of which copies are marked Respondent's Exhibit MM, NN, OO, PP and QQ, respectively.

Mr. Adams: Petitioner objects to the admission of the documents so offered by the respondent for the reason the same are not material or relevant to any issue presented in this cause; further, for the reason that documentary evidence of other sales, transfers or negotiations with respect to properties wholly separate and distinct from the properties concerned under the issues in this case is incompetent, irrelevant and immaterial; further, that no testimony has been adduced tending to show in what way these certain transactions may be comparable, either as to time or nature of properties or consideration affected by the instruments and the transactions so offered in evidence.

Mr. Fullerton: These are the transfers by which the contract between the Magnolia and the Hogg Creek in September and for the sale of half of the property and the contract between the Magnolia and the Hogg Creek in November for the sale of all of the stock, concerning which the Board has already admitted evidence, were carried out.

Mr. Adams: That is correct, except possibly we should state a minor classification. The Exhibits MM and NN pertain to the first Magnolia transaction of September 18, 1918. Those were in performance of that original contract. The three later instruments of conveyance are the assignments made by the Hogg Creek Oil Company to Magnolia in September or October, 1920, upon the occasion of the dissolution of the Hogg Creek Oil Company, a year or so after the Magnolia Company had acquired all of that company's stock.

The Presiding Member: Why do you offer those of 1920?

Mr. Fullerton: The Magnolia purchased all of the stock of the Hogg Creek Company in 1919. They

dissolved the company and these transfers, these last three, were the transfers from the Hogg Creek to the Magnolia in order to get title to the properties in the Magnolia Petroleum Company.

* * * * * * *

Mr. Davis: I am unable to see even then how these conveyances on dissolution help us at all in this inquiry. They buy a half interest in the Hogg Creek Oil Company. They claim, I assume, that that is a comparable purchase. They buy half of the stock of that company——

Mr. Fullerton: All of the stock of that company.

Mr. Davis: They already have a half interest in the assets. The assets are not yet described. The value of the stock depends, of course, upon the then condition of the Hogg Creek Company. A great many factors utterly disassociate that stock from the stock we are inquiring about here. Now, how does it illuminate the situation in the least to learn that a year later they elected to dissolve the Hogg Creek Company and take to themselves by way of a liquidating dividend all of its assets through the channel of these conveyances? I confess myself utterly unable to see what the relevancy of that evidence is.

Mr. Fullerton: As the respondent interprets the contract of November, 1919, the Hogg Creek Company agreed to sell all of its stock to the Magnolia. The Magnolia agreed to buy. But in the event that the company could not carry out that agreement—that is, that all the stockholders would not conform with that agreement—then the Magnolia Company would pay the same price for all of the physical assets of the Hogg Creek Oil Company. Now, these instruments show what the physical assets of that

company were in 1920. Mr. Sinclair a little later testifies that those physical assets in so far as the leases were concerned were the same as in November, 1919. In other words, it identifies the leases which were held by the Hogg Creek Oil Company in November, 1919.

The Presiding Member: You are not offering any proof as to a different value in 1920 as affecting this?

Mr. Fullerton: No. This is to show what the Hogg Creek Oil Company owned at the time the Magnolia Petroleum Company acquired all of its stock.

The Presiding Member: Is your proof going to take the form of showing a similarity between the stock of the Hogg Creek Company and the stock of the Transcontinental or as between the assets of the Hogg Creek Company and the Transcontinental?

Mr. Fullerton: As between the assets of the Hogg Creek Company and the assets of the Tex-Penn Oil Company. I should perhaps qualify that a little. It is between the leases owned by the Hogg Creek Company and the leases owned by the Tex-Penn Oil Company, although I do not want to be precluded from comparing stock with stock.

Mr. Davis: There was no allocation of price to any particular assets of the Hogg Creek Company, was there?

Mr. Fullerton: The record will show that the Hogg Creek Company—that is, the deposition from now on will show that the Hogg Creek Company owned these leases which are shown as in red on the map, KK-1, before you, and the books of the company will show what other assets there were. The books of the company as of November, 1919, will show that.

Mr. Adams: May I say to the Court on that point that we will come directly into a challenge as to the sufficiency of that method of proof and the accuracy of the value of those assets. That will appear very shortly in the testimony of this witness. So I do not think that we can subscribe to a broad statement that the problem is so simple of solution.

The Presiding Member: We will overrule the objection at this time.

Mr. Adams: Exception.

The Presiding Member: Note the exception.*

My attention is called to the fact that the three instruments marked OO, PP and QQ and which are assignments of leaseholds from Hogg Creek Oil Company to Magnolia Petroleum Company, all dated September 20, are instruments executed in the year 1920. The occasion for those transfers is indicated in the transfers themselves, it being the liquidation of the Hogg Creek Oil Company and the transfer of all of those properties to its sole stock owners, the Magnolia Petroleum Company, an exchange of all of its properties subject to all of its liabilities. The leases of the Hogg Creek Oil Company at the time this stock was acquired by the Magnolia Petroleum Company in 1919 were substantially the same leases which were transferred by the Hogg Creek Oil Company to the Magnolia Petroleum Company on September 20, 1920. It is my recollection that there were some changes in acreages. Such changes will undoubtedly appear in the instruments themselves. I recall three, the Sparks lease, the Foot lease and the Barry lease, and I believe the assignment will make specific reference to former assignments from the Hogg Creek Oil Company and the Magnolia Petroleum Company covering a part of the acreage involved. I have no definite

* Subsequently, upon motion of petitioner, Respondent's Exhibits OO, PP and QQ were stricken. See page 1678.

first-hand knowledge as to what caused the change in the holdings of the Hogg Creek Oil Company leases in regard to those three of which I spoke. I know that there was litigation in regard to those three and that compromises of litigation were made. I can only tell by reference to the assignment itself (Exhibit QQ) how many acres were affected by the changes in those three leases.

I have no balance sheets of the Hogg Creek Oil Company as of November 24, 1919. There was no balance sheet from the books of that company for that specific date. The balance sheets were prepared as of the last day of each calendar month in the regular course of accounting procedure. I have pencil trial balances which were prepared, for the months of July to December, 1919, from the books of the Hogg Creek Oil Company at my direction after the Magnolia Petroleum Company purchased all of the stock of the Hogg Creek and that company obtained the books and records of the Hogg Creek. It is my recollection that at the time the Magnolia Petroleum Company purchased this stock of the Hogg Creek Oil Company the Hogg Creek Oil Company did not have a complete set of accounts and books, inasmuch as the Hogg Creek Oil Company did not directly operate any of the properties, they being operated by the Magnolia Petroleum Company, the Humble Oil & Refining Company and the Plains Oil & Gas Company. These three companies rendered to the Hogg Creek Oil Company an operating statement each month, giving in detail all of the expenditures made by those companies for the joint account. Of course, revenues derived from the Hogg Creek portion of the oil was paid direct to the Hogg Creek Oil Company by the purchaser. After the Magnolia acquired the Hogg Creek stock, I had the accountants and clerks of the Magnolia Petroleum Company take all of the books and records available, and also the operating statements which had been rendered to the Hogg Creek by the other companies, and to enter in their books

of account in regular manner all of these items and then to prepare for each month a trial balance of those accounts to show the financial condition of the Hogg Creek Oil Company on the last day of each calendar month during the year 1919, or at least beginning with June 30, and I have such statements now.

Q. By reference to those statements and from your personal knowledge can you state what assets the Hogg Creek Oil Company had in addition to the leasehold interests at the time the Magnolia Petroleum Company acquired the stock of the Hogg Creek Oil Company?

Mr. Adams: Just a minute. Answer yes or no.

A. No, not at that date.

Q. Can you state what assets, other than leasehold interests, the Magnolia Petroleum Company did acquire from the Hogg Creek Company other than the acquisition of 1918?

Mr. Adams: Answer yes or no.

A. No.

Q. Can you state what assets the Hogg Creek Oil Company had at the time the Magnolia Petroleum Company acquired the stock of the Hogg Creek Company? A. Not at that exact date.

Q. What is the nearest date at which you can give that information? A. November 30, 1919.

Q. Will you state what those assets were on November 30, 1919?

Mr. Adams: Just a moment, Mr. Sinclair. Let him answer yes or no. Now you state you can.

A. What was the question?

Q. Read the question. (Last question propounded to witness read by the reporter) A. Yes.

Mr. Adams: The petitioner objects that the testimony is incompetent and inadmissible under the issues in this case, prior testimony having shown that the Magnolia Petroleum Company purchased all of the outstanding shares of stock of the Hogg Creek Oil Company; that under the issues in this case it is neither competent nor admissible for this witness, by records of said company, to endeavor to value the oil and gas leaseholds which formed a part of the assets of the Hogg Creek Oil Company separate and apart from all other assets. * * *

Further, that the transaction in question is too remote in time from the time of the transactions in issue in this cause and pertain to properties wholly disassociated and distinct from the properties in issue in this cause.

Mr. Foley: The respondent states that the purpose of the question is to show what assets are represented by the stock of the Hogg Creek Oil Company at or about November 30, 1919. Now answer the question.

Mr. Adams: That we submit for ruling.

Mr. Fullerton: The agreement, as we have stated before, in respondent's view was to take all of the stock of the Hogg Creek Oil Company, or, if that could not be done, all of the physical assets. The leasehold interests have been shown. This is for the purpose of showing what the other physical assets were.

The Presiding Member: It is for something more than that; is it not to show what they were worth?

Mr. Fullerton: Yes. The price paid was $6,000,000. $6,025,000, to be exact. This is to show the price of the other assets in order to arrive at the comparability of the leases of the Hogg Creek with the leases of the Tex-Penn.

Mr. Adams: The petitioner's objection there is that that is an improper method. They take simply a book figure, a trial balance sheet, prepared by witness Sinclair. That is, a balance sheet only, prepared by witness Sinclair, who is treasurer of the Magnolia Company, a balance sheet prepared under his supervision it is true, and by his clerks, but from records which neither he nor those clerks kept or made up. Then with that type of balance sheet he takes the book figures, which aggregate upwards of $1,800,000 in round figures and he proposes to subtract those from the round figure of $6,025,000 paid by the Magnolia Company to the random stockholders of the Hogg Creek Company and by a simple process of subtraction arrive at a figure which he says represents en bloc the value of all of this acreage which is depicted in Exhibit KK-1 in coloring and without any further designation or effort to indicate the character of those properties, the productivity, the distribution of values, or anything. That is the point to which our objection is addressed, that that is a wholly improper method of endeavoring to ascertain the value of leaseholds if comparable otherwise.

Member Van Fossan: Does your view coincide with the facts proposed here?

Mr. Fullerton: Practically. * * *

We believe that the book value, the amount that the parties themselves placed on the books at that time, is some evidence of the value. It gives us a chance to arrive within a reasonable distance of the value of the leases.

Mr. Davis: Let me ask this question. It must be remembered that at the time of the transfer or purchase of this stock the Magnolia was already a one-half owner of the property. How are we to

know that a part of the consideration they determined to pay was not bottomed on their expectation and belief that by becoming a sole owner of the property they would be in a more advantageous position? That they did not pay something for the good will, or the reverse, if you please? How in the world can the Board take this consideration and allocate it bit by bit to the individual physical assets on the basis of their book showing?

Mr. Fullerton: We do not think it is necessary to allocate this to the physical assets, because the contract was, as I view it, that the Magnolia for the six million odd dollars would buy the stock of the Hogg Creek Oil Company, or, in the alternative, buy all of the physical assets of the Hogg Creek Oil Company. We have put those forward for the purpose of showing that there were other assets which must be taken into consideration.

Member Van Fossan: Will you have other evidence as to the value of these leases, or is this your method of proving the value of the leases?

Mr. Fullerton: I do not think we have other evidence as to the value of the leases. The leases and the physical assets were valued in the contract as equal to the amount which the Magnolia was willing to pay for the stock, as we interpret the contract. The contract is already in.

Mr. Davis: Here is the language of the contract: "It is understood, however, that if you are unable after diligent effort to deliver all of the stock, Magnolia Petroleum Company will purchase all of the physical properties and assets and rights of every nature of the Hogg Creek Oil Company," and that would include, of course, bills receivable, and so forth, whatever they might be, "as they exist of this date, less necessary current expenses paid in

operating the affairs of the company between this date and the date of the closing of the transaction upon the basis"—it leaves open the computation, not a flat figure—"upon the basis of paying therefor a sum equal to $10,000 per share for all of the stock of the company," which, as the Court will remember, was 600 shares, "such purchase of the physical properties to be consummated upon demand of Magnolia Petroleum Company at any time after the expiration of the thirty-day period and in the contingency that you are unable to deliver all of the stock." As a matter of fact, they were able to deliver all of the stock, and the stock was purchased with whatever was underlying it, namely, the tangibles, intangibles, bills receivable—what you will—it was purchased, and the assets came a year later by way of a liquidating dividend. * * *.

Mr. Fullerton: * * * I do not think it is necessary for the Board to find that the Duke-Knoles, Tex-Penn leases and the Magnolia Petroleum Company's purchase of the Hogg Creek leases were comparable to the extent that a value could be figured out from them. But this is a huge sale——

The Presiding Member: Let me get that. The leases are not comparable to the extent that the values given for the Tex-Penn are not to be gauged by what the Hogg Creek sold for?

Mr. Fullerton: I think that is true on account of the point of time. This took place in November, 1919. Our transaction is August 1, 1919. * * *

* * * * * * *

The Presiding Member: Now, does that help us if it is not comparable?

Mr. Fullerton: It helps you in this way, that the theory of the petitioner is prior to August 1,

1919, every well-informed person in the oil industry knew that the bottom had dropped out of the Desdemona Pool; that there was not value in the Tex-Penn, Duke-Knoles leases in excess of $500,000.

Mr. Davis: Neither the theory of the petitioner nor the testimony of any witness was to the effect that the bottom had dropped out of the Desdemona Field in August, 1919.

Mr. Fullerton: The witness David Donoghue said when Mr. Belt went away in April, 1919, the Gulf Production Company quit buying and that the Desdemona Field was all blown up.

Mr. Davis: The testimony of your witness Spoonts is that it went to pot in September.

Mr. Fullerton: The testimony of the witness Spoonts was that the decline was in September.

Member Van Fossan: Coming back to the tender made here, I take it that anything which is admissible must be admissible strictly on its own merits rather than on generalities. The theory that you have advanced really asks us to value these leases at their book figure. Now, how many times do you suppose we have heard the respondent contend that that was no test of value when advanced by the other side?

Mr. Fullerton: I do not think it is necessary for the Board to value the leases as separated from the other assets of the Hogg Creek Oil Company, but we believe this is admissible, if for no other purpose, and I do not wish to limit my offer, but I think it is admissible to show the assets besides the interest in the leases that the Magnolia Petroleum Company purchased at that time. Here was a sale for $6,000,000 which we have shown, and it is in evidence it included a half interest in 4400 acres and some other assets. This shows what the other assets were.

Member Van Fossan: To be of any value in the determination of the problem before us, I take it that a sale would have to be something comparable * * *.

Mr. Fullerton: If the sale took place before the basic date, August 1, 1919, we would have to show that it was comparable; we would have to show that it was sufficiently similar so that the Board could base its opinion of the value of the Tex-Penn, Duke-Knoles leases on that sale.

The Presiding Member: Why does it stand in a different category if it is subsequent?

Mr. Fullerton: Because this is a justification by subsequent events of the opinions which our experts have advanced. It is a corroboration.

Member Van Fossan: But must they not be of comparable property?

Mr. Fullerton: It would be if we were attempting to figure a value—or, it would necessarily have to be, if we were attempting to figure a value on the Tex-Penn, Duke-Knoles leases from this particular sale; but we are not attempting to do that.

Member Van Fossan: You are offering it as corroboration?

Mr. Fullerton: We are offering it as a corcoroboration of the fact that the field was still considered of immense value and that big sums of money were being spent in the field for property; in other words, that there was a market value for leases in the Desdemona Field as late as November, 1919.

* * * * * * *

The Presiding Member: Mr. Fullerton, my colleagues suggest you restate your offer and the purpose of it.

* * * * * * *

Mr. Fullerton: The purpose of this particular question is to show what assets the Hogg Creek Oil Company owned on November 30, 1919, being the nearest date concerning which there is information to November 24, 1919. * * * It is in corroboration of the testimony of the respondent's witnesses that the conditions were such there was a fair market value for the Tex-Penn, Duke-Knoles leases on August 1, 1919, and it is to refute the claim of the petitioners that the well-informed persons in the oil industry knew as early as August 1, 1919, that there was no market for leases at anywhere near the prices which the respondent claims.

Mr. Davis: The statement of my friend sounds to me as if he intended to treat this as a comparable sale. May I ask Mr. Fullerton whether he does not now contend that by the introduction of this testimony he is seeking to prove a comparable sale to that of the Tex-Penn leases?

Mr. Fullerton: I said that we did not consider the sale comparable.

* * * * * * *

Mr. Fullerton: We admit that this is not such a sale as can be used to base valuation on upon August 1, because it took place after August 1, 1919. In other respects the sale would be comparable.

* * * * * * *

The Presiding Member: It seems to me you will have to limit your offer much more than that, otherwise the objection is well taken on your own statement in the matter.

Mr. Fullerton: May we have a ruling on the objection as it now stands, then we can make a further offer or limit the offer?

The Presiding Member: On the offer, as I understand it, wherein you concede that the sale is not comparable, I will sustain the objection.

Mr. Foley: Exception.

The Presiding Member: Note the exception.

Whereupon the respondent made proffer of proofs, as follows:

Mr. Foley: "From the transcript of accounts of the Hogg Creek Oil Company which I referred to as trial balances, it appears the assets of that company, as of November 30, 1919, other than leaseholds, consisted of the following:

| | |
|---|---|
| "Real estate | $ 750.00 |
| Producing wells and equipment | 543,540.04 |
| Equipment in completed wells | 431,611.37 |
| Tools and other miscellaneous wells | 22,294.11 |
| Notes and accounts receivable | 925,525.17 |
| Cash | 11,694.04 |

"Q. What liabilities, if any, did the Hogg Creek Oil Company have on that same date?"

Mr. Adams: The same objection.

The Presiding Member: You are adding an objection?

Mr. Adams: Yes; because this is in the course of the proffer.

The Presiding Member: Sustain the objection.

Mr. Fullerton: Exception.

Mr. Foley: The witness, if permitted, would have answered as follows:

"According to the records just referred to, their liabilities appear to be notes and accounts payable, $560,200.41.

"Q. Now, make a similar statement in regard to the Hogg Creek Oil Company as of October 1st, 1919.

"Mr. Adams: The same objection as noted with reference to the preceding question pertaining to the assets of the Hogg Creek Oil Company as of November 30, 1919."

Mr. Foley: That is changed later on. The question should be amended to read: "September 30," instead of "October 1."

"Mr. Adams: Just a moment. Objected to for the further reason that the date of September 30, 1919, has not been disclosed in the testimony as being in anywise material in the testimony under consideration and we respectfully request a statement of the purpose of the proof.

"Q. The respondent states that the date September 30th is the nearest date concerning which there is data available to the date of September 18th and September 20th, upon which the contract between T. M. Dees and associates to the White, Weld & Company were executed.

"Mr. Adams: Just a moment. Petitioner objects to the testimony offered as in no sense material or relevant to any issue under this cause. It now appears that respondent is endeavoring, by the witness who had custody—who at present has custody of the former records of the Hogg Creek Oil Company, but who did not in anywise participate in the keeping of such records, the keeping or making of such records, and to elicit from such records testimony with respect to transactions of which the present witness has no knowledge or information. In addition to the lack of qualification of this witness to testify to the matters in question, objection is further made on the ground the White, Weld & Company transaction, as shown by the prior testimony, was an offer and acceptance for sale of certain leaseholds separate and distinct from the leaseholds at issue in this case; that such contract was never consummated or performed, but, on the contrary, was cancelled and terminated by the parties. As such, the offer itself and all testimony from the records of the company with respect to the properties affected by such records is incompetent, irrelevant and immaterial. Furthermore, objection is made on the ground of the remoteness of time, the lack of evidence of similarity as to price and character

of property or other factors which would make a comparison for the purpose of valuation under the issues in this case."

The Presiding Member: Sustained.

Mr. Fullerton: Exception.

Mr. Foley: We offer to prove that if permitted the witness would have answered as follows:

"As of September 30, 1919, it appears from the transcript of the trial balances which I have the assets of the Hogg Creek Oil Company consisted of:

| | |
|---|---|
| "Producing wells and equipment | $511,725.99 |
| Incomplete wells and equipment | 579,790.53 |
| Tools and miscellaneous equipment | 22,629.39 |
| Real estate | 750.00 |
| Cash | 51,424.75 |
| Notes and accounts receivable | 860,545.66 |
| Liabilities consist of notes and accounts payable | $438,867.51" |

That completes the offer of proof.

"Q. Will you make the same statement as of date July 31, 1919?

"Mr. Adams: Petitioner again asks for an offer. Did you say July 31st?

"Q. 1919.

"Mr. Adams: I withdraw that question. May the record show the petitioner objects for the reason that the testimony requested is not shown to be produced by a witness competent to testify concerning the books and records and accounts of the Hogg Creek Oil Company, not having been concerned with the making and keeping of such records or the accuracy thereof; that the records and accounts of the Hogg Creek Oil Company have not been shown to be in any sense material or relevant to any issue presented in this cause, and are not competent as proof upon any such issues."

Mr. Adams: Petitioners desire to supplement that objection further to this effect, that the testimony proffered, since it relates to the subject-matter of certain offers claimed to have been made on or about August 1, 1919, as to which testimony has heretofore been excluded, is not admissible. If I may explain to the Court, this is the identical question of the treatment of assets other than leasehold as of August 1, or, rather, July 31, 1919, which presumably is the date which the petitioners have submitted their testimony concerning their offers, all rejected by the Hogg Creek Oil Company, and as to the testimony of which your Honors excluded.

The Presiding Member: Do you want to say anything?

Mr. Fullerton: Not on that point, because the Board has already ruled out that offer.

The Presiding Member: Sustain the objection.

Mr. Fullerton: Exception.

Mr. Foley: Respondent offers to prove by the witness if he would have been permitted to do so he would have testified as follows:

"As of July 31, 1919, the assets of the Hogg Creek Oil Company consisted of——"

Mr. Adams: May I suggest that we could perhaps save time with a couple minutes' conference here, if the Board please?

The Presiding Member: All right. We will take a recess. I was wondering if this entire record relates to the sale. We are not going to receive that in the broad way in which it has been offered. Now, can you not make an offer of proof in reference to it instead of reading it? Of course, if it has some other questions in it besides that, that is another matter.

Mr. Fullerton: We will try to work something out during the recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Mr. Fullerton: Now, in the alternate and not abandoning the position taken by the respondent except in so far as it is necessary by the sustaining of petitioner's objection, we would offer evidence regarding the purchase by the Magnolia Petroleum Company of the stock of the Hogg Creek Oil Company on the ground that the assets which by the parties were agreed to be of equal value to the stock, as respondent interprets that contract, were comparable in physical character, and they were comparable in location, and that all the surrounding circumstances, such as drilling and production, having been shown, they are comparable, the fact these assets were sold at this late date and to prove that the bottom had not dropped out of the market by August 1, 1919, that this sale is comparable as corroboration of the opinion of the expert witnesses of the respondent, although not comparable to use as a basis for the determination of value or as independent evidence of value. The respondent urges that the sale is admissible to show that there was still a market for blocks of leases in the Desdemona Field as late as November 24, 1919, and that the bottom had not dropped out of the market by August 1, 1919. It is admissible to show that it was not the knowledge and belief of all well-informed persons in the oil industry that the Desdemona Field on October 1, 1919, was a failure.

Mr. Adams: That offer is objected to for the reasons before stated as to the general offer.

The Presiding Member: As I understand that offer, I feel inclined to rule against it. As I understand it, you assume that you have established comparability. Now, if your offer is simply an offer that is particularly in this field to show a sale subsequent to August 1, namely, in November, and you offer that in rebuttal of what you say is the testimony of the petitioners that the property was failing on August 1 and practically on its last legs, why, we might be inclined to receive it for that limited purpose. But as

you read it, it seems to me it is practically like your other offer. I therefore assume that you offer it as comparable, or you do not offer it for that purpose. You have conceded it is not a comparable sale, therefore it goes out for that reason. The only other point is whether you can offer it for the general purpose to show that there were sales in this field after August 1.

Mr. Fullerton: We have conceded, if I have expressed myself clearly, that it is not a comparable sale for the purpose of determination of value, because it is after the date on which the value is to be determined. We have not conceded, or, at least, I have not intended to concede, and if I have so spoken I beg to correct myself, that except for that one point of time it is not a comparable sale. We believe it is a comparable sale for the purpose of corroboration. We admit that the Board cannot use that sale in its computation of the value of the lease of the Tex-Penn Oil Company because of the fact that in our opinion no fact which occurs after a basic date can be used in determining value as of a basic date. In other words, only those facts which have occurred prior to the date and those which may reasonably be anticipated from the prior facts can be the proper basis for a determination of value.

Member Van Fossan: As corroboration of what?

Mr. Fullerton: As corroboration of the opinion evidence which the respondent's witnesses have given.

Member Van Fossan: That is covering a pretty broad field.

The Presiding Member: You mean value?

Mr. Fullerton: Yes, and of market.

The Presiding Member: How can it be value on your concession that it is not comparable? It is not comparable in point of time.

Mr. Fullerton: It is a corroboration of our witnesses' statements that the bottom had not dropped out of the market. It is corroboration of the value which they have placed upon the Tex-Penn, Duke Knoles leases.

Member Van Fossan: Value assumes comparability.

The Presiding Member: It cannot be compared in support of value under your statement that it should not be so used.

Mr. Fullerton: We are not using it for that purpose. We are merely showing to the Board that the subsequent events justified the reasonableness of the opinion as expressed by respondent's witnesses.

The Presiding Member: If that is true, it seems to me it has to be a comparable sale.

Mr. Fullerton: It is, except in point of time.

The Presiding Member: But that is enough to eliminate it.

Mr. Fullerton: It is enough to eliminate it from any computation you make in the determination of the value of the leases. I think the sale has to be comparable as of a given date. Had this occurred prior to the basic date, I believe it would have been a comparable sale and the Board should take it into consideration. Since it occurred after the date, I do not believe the Board can consider it in determining the value of the Tex-Penn leases, except in so far as such evidence is admissible to corroborate the opinion of the expert witnesses.

Member Van Fossan: I take it your point is it would not be competent since it is not contemporaneous in time and not comparable in time as a measure or as a factor in fixing the value on the basic date, but that it is sufficiently comparable in fact for testing the reasonableness of the figure that you fix?

Mr. Fullerton: You have expressed it splendidly.

Member Van Fossan: Thank you. Does that not make us assume or require us to assume that the property is comparable in fact?

Mr. Fullerton: It requires you, if the Board please, to decide whether the property is comparable in fact, because we are showing you all of the surrounding circumstances. We are showing you everything. We are showing you the

location and all of the matters, such as drilling and production, in the entire circle of the five-mile radius. We are showing you everything which would affect the value of leases in that area. We are not painting part of the picture. We are giving you everything, and the only way, as I stated, by which we can show that one sale is comparable with another is to show all of the surrounding circumstances. When you have the complete picture before you, then the Board decides whether a sale is comparable or not. This that we are offering is part of the whole picture.

The Presiding Member: You are not offering to prove that any particular tract of the Hogg Creek is comparable to a particular tract in the Tex-Penn, are you?

Mr. Fullerton: No. We are offering to prove that the 4400 acres of the Hogg Creek are comparable to the 3500 acres of the Tex-Penn.

The Presiding Member: By what? What kind of showing?

Mr. Fullerton: By showing that they were located as nearly adjoining as two such great tracts could be; by showing all of the development and drilling on both of the tracts from the time of the discovery well clear through to December 31, 1919.

The Presiding Member: Yes, but your witnesses said that some of that Tex-Penn property is worth $500 an acre and some of it worth $10,000 an acre. Now, which part of it are you comparing?

Mr. Fullerton: We are not dividing or attempting to divide the tracts for the purposes of comparison here. Here are two big blocks. Is one comparable with the other? The effort of the respondent has been to give you all the circumstances so that you can decide whether they are comparable, and we believe for purposes of corroboration we have sustained that burden and have shown that they are comparable.

Member Van Fossan: As I understand the specific questions that were being submitted before the recess, they related to the assets of the company. Am I correct in that?

Mr. Fullerton: Yes.

The Presiding Member: You are not offering to prove these assets as a part of your proof of comparability, I take it?

Mr. Fullerton: Well, in this far: We must show that the areas are as nearly as we can show it similar in size.

The Presiding Member: My feeling about it is that you may introduce evidence for the purpose of showing sales of property in this field were made within a reasonable time after August 1, 1919, for the purpose of showing that the bottom had not dropped out of it as of that date. It does not seem to me you should go beyond that in the state of this record. In the first place, we start with the premise that the sale was not comparable. I do not see how the board can assume that the property is comparable. It seems to me that is a matter of proof that you have to make as a preliminary to our receiving evidence of other sales. It may well be that in a field of this sort it is spotted, that a dry hole here does not condemn adjoining property and that you cannot prove your case by compared sales because the property may not be subject to comparison.

Mr. Fullerton: We submit we have submitted evidence to sustain the burden of proof that the properties are comparable.

The Presiding Member: You have to do more than that with me. You cannot say here it is on the map somewhere and pick the information out from a thousand sources. I must know it before I rule on it. Is that not correct?

Mr. Fullerton: I think it is, but I do not know in what wise I can tell you all of the details of the great mass of evidence we have put in. We have shown the development

month by month from the time when the discovery well came in, right through to the year 1919. We have shown the activity in drilling. We have shown everything. We have shown every new well that was started, every new well that was completed, whether it came in as a dry hole or as a producing well or as a gas well, and what the production was, from the time it came in. We have not shown it by wells, but by leases by months. We have shown the production of the whole field clear through to December 31, 1919.

The Presiding Member: If I have followed this testimony, it is that you cannot compare property in this field acre by acre. That is, it varied very widely. Therefore, if you are going to show comparability you have to show it by very definite testimony and that is not only the testimony of petitioner's witnesses but I think it is the testimony of your witnesses as well.

Mr. Fullerton: The most definite thing I know of is to show the exact development and the exact status of every well in the field for the entire period and we have shown that?

The Presiding Member: As far as I can see at the present time, the only testimony that we should receive is sales subsequent to August 1, simply for the purpose of showing that there was activity in the field and the extent of the activity if you want to go into it.

* * * * * * *

The Presiding Member: On the offer as made, I will sustain the objection to it. I do not know whether the record shows it in that form.

Mr. Fullerton: May we have an exception? Now, the respondent still in the alternative and not abandoning his former position except in so far as the ruling makes it necessary, offers testimony regarding this sale and the description of the property involved in the sale, the price

paid, for the purpose of proving that such a sale took place at a large amount of money and that the bottom had not dropped out of the market on August 1, 1919, this being for the purpose of corroborating the testimony of the respondent's expert witnesses.

The Presiding Member: In that particular?

Mr. Fullerton: Yes, sir.

Mr. Davis: It seems to me, if I may suggest, you can get a more sharp issue here for ruling if counsel should say: We offer to prove that on such and such a date the Magnolia Company purchased from the Hogg Creek 600 shares of its stock at such and such a figure, consummated on such and such a date, being at the time a half-owner in the property. To say that we offer the property and the contracts and the description makes it very difficult to come to a sharp issue on it. That is not by way of criticism, but by way of suggestion. We object to the tender in the form in which it is made, on form and in principle.

Mr. Fullerton: I understand the Board wished to consider the general question, and if there was nothing to be admitted at all we would make the offer as shown by the testimony. If the Board decides that the sale may be admitted or any parts of the facts may be admitted, why we will go forward with the testimony and sift it out.

The Presiding Member: I indicated the length I think you should go. It may very well be that there is a shorter method of doing it than going through this transcript page by page.

Mr. Fullerton: There are some seventy pages remaining of the transcript and I would like to avoid reading it if we can. Now, I do not know as you made an exact ruling on that, but as I understand the ruling of the Board, the evidence of the sale, the property sold and the prices at which sold is admissible for the limited purpose of showing that a market continued to exist in the field after August 1, 1919; the field was not known to be a

failure on that date, and to justify and corroborate the opinions of the respondent's witnesses.

The Presiding Member: Well, that is the thought I had in mind. There may be another objection, as indicated by Mr. Davis, namely, due to the fact that Magnolia already had an interest in this property, this transaction does not in fact serve to indicate that there was any market. That is, however, another question, it seems to me, that we can meet when we reach it.

Mr. Adams: We are quite prepared to shorten the record in any way we can, and to stipulate for the purpose of enlarging exceptions afterwards, it may be regarded that as to each of the offers previously made, there have also been the alternative offers made, with the ruling of the Court, and they can be appropriately identified by page and offer. * * *

The Presiding Member: I do not know what is in the balance of the record there. I would like to indicate this much, though: It seems to me from the testimony so far as given that the Government might very well prove that there was activity in this field subsequent to August 1. That is, that there was not a cut-off for a few months thereafter and that there was in fact activity in this field. That does not seem to me to carry with it all the details of the sort sought to be admitted in this case, nor do I know whether the manner of offering this proof is proper. That mere fact it seems to me could be shown. That is the thought I have in mind and as to whether the parties could in some way agree on it while at the same time objecting on the ground of its materiality.

Mr. Davis: If Mr. Fullerton wants to prepare a written stipulation that this transaction occurred on such and such a date, the relation of the parties were so and so, the price paid was so and so, we will let him off with a stipulation without controverting the facts, unless, of course, it is too detailed and then we will make our motion predicated on it.

The Presiding Member. He might even incorporate in that the statement that the books of the corporation revealed the following.

Mr. Davis: Yes, he can put that in. No. The question is whether that was properly proven because the books were proven or attempted to be proven by a person who had no connection with them.

The Presiding Member: It would not be important from your standpoint if it is not offered as evidence of value.

Member Van Fossan: My thought is it would eliminate the whole question of reading the depositions, because it all seems to be centered around some of those things.

Mr. Davis: Maybe. I should not like to commit myself to too much detail in reference to the matter, but it seems to me such a stipulation could be offered, and if we could flank all of this testimony in that fashion——

Mr. Fullerton: We will be glad to comply with the suggestion of the Board so far as it can be done.

The Presiding Member: Suppose you try to do that. Can we proceed with something else now?

Mr. Fullerton: We will try.*

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M. J. McLAUGHLIN, a witness called by respondent, was duly sworn and testified (upon deposition duly taken, returned and filed with the Board) as follows:

My name is M. J. McLaughlin. I am manager of the producing department of the Magnolia Petroleum Company. I have been with that company approximately twenty-one years. I received a subpoena in this matter of M. L. Benedum and the Tex-Penn Oil Company. I have

*A stipulation of this character appears later in this narrative and was admitted over the objection of the petitioners as to materiality and relevancy (see pp. 1673 to 1677).

copy of the subpoena with me. It required me to produce certain papers. A portion of the subpoena reads: "You are required to bring with you the following, to wit: All working papers, notes, memoranda made by you and for you and which concerns the appraisal and valuation of the properties of the Hogg Creek Oil Company made by you and upon which was based the offer made August 1, 1919, by B. H. Stephens on behalf of the Magnolia Petroleum Company to the Hogg Creek Oil Company for the properties of the latter company." I have brought certain papers in response to that subpoena and produce them here. My position here with the Magnolia Company in 1919, was that of superintendent located in Tulsa, Oklahoma, the first half of the year, and on July 1st I was made assistant manager of the production department, principally looking after the drilling and production of wells. I wrote a certain letter dated July 16, 1919, to Mr. E. R. Brown and here produce a copy of the same, which I assume to be a true copy, since it was procured in the files of the Magnolia Company. After reading the letter and refreshing my memory from it, I can testify that the contents of that letter was in accordance with my recollection of the matter. I have here six other pencilled sheets of paper in my handwriting which have been produced in response to the subpoena. These refer to the same matter as the letter dated July 16, 1919, to Mr. Brown. The occasion for my making the memorandum which occurs on these pencil sheets and in writing the letter was that I was following the instructions of Mr. E. R. Brown, president of the Magnolia Company, and Judge Greer, general attorney for the company.

Q. What were those instructions? A. Well, I can't repeat them word for word.

Q. Give us the substance of it. A. To compile those figures to the best of my ability as to the amount of oil those properties would produce: that is substantially what they meant.

Q. What did you do by way of preparation or study or investigation in following out the instructions given you?

Mr. Adams: Just a moment. Petitioner asks for an offer in respect of the testimony by this witness and the purposes for which such testimony is offered.

Q. I am going to reserve my statement and state the offer of the matter before the Board?

Mr. Adams: All right. Just make some statement with reference to it.

Q. The respondent will reserve his statement of the purpose for which the testimony is offered until such time as the depositions are offered in evidence at the hearing before the Board.

Mr. Adams: Note an exception.

Q. Without limiting himself to the purpose mentioned hereinaffer, the respondent will state the purpose for which this testimony is offered is to show that shortly before Mr. Stephens, Mr. B. H. Stephens, on behalf of the Magnolia Petroleum Company made an offer to the Hogg Creek Oil Company as shown by Mr. Stephens' deposition previously taken, the present witness, Mr. M. J. McLaughlin, who is manager of the production department, was called upon to estimate the potential production of the properties owned by the Hogg Creek Oil Company. The testimony is offered for the further purpose of showing that the allocation of value as on November 24, 1919, as testified to by Mr. L. S. Sinclair in his deposition previously taken in these appeals, was different from the allocation of value upon which the offer of August 1st by the Magnolia Company to the Hogg Creek Oil Company was based.

Mr. Fullerton: Just a moment. As stated here, the purposes were reserved until such time as the deposition was offered. We wish to add to that the purpose which appears obviously from the testimony that this was the estimate of the potential production made by the production manager of the Magnolia Oil Company who had been with that company for twenty-one years.

The Presiding Member: Why?

Mr. Fullerton: For the purpose of showing that this witness made this testimony of potential production. The particular thing ——

Member Van Fossan: Potential of what property?

Mr. Fullerton: The particular thing is the potential production from the Duke lease, which is seventy acres in the center of the Tex-Penn acreage.

Member Van Fossan: Owned by Magnolia?

Mr. Fullerton: At that time a half interest, yes, sir.

Mr. Adams: May I state the objection which was taken at the time?

"Petitioner objects to examination of the witness further for the reason it appears from the testimony of a prior witness, B. H. Stephens, that the offer in question was reduced to writing and by him delivered on or about August 1, 1919, to the officers and directors of the Hogg Creek Oil Company, * * * further, petitioner objects to the offer to the extent it purports to explain or contradict the testimony of the respondent's prior witness L. S. Sinclair on the ground the respondent is not at liberty to impeach its own witnesses heretofore called in this cause."

In addition, petitioners will supplement the objection at this time that this is an item of proof

which lies right in the supposed offer to the Hogg Creek Oil Company by the Magnolia Oil Company as of August 1, 1919, which generally were rejected on prior offers by respondent.

The Presiding Member: What is this particular bit of evidence which this witness is giving? As I understand it, he is giving his estimate of the productivity of certain land of the Hogg Creek, one piece of which is next to the Duke-Knoles?

Mr. Adams: Exactly.

Mr. Fullerton: The reason the respondent believes now that this is admissible, even though the Board has ruled that the offer itself is not admissible, is because as a matter of fact the assistant production manager at that time of the company, who had been with them many years at that time, actually made a memorandum at the instructions of the president showing a certain potential production from a certain acreage and wrote a letter to the president sending that memorandum to him. It is a fact that he actually made such an estimate.

Member Van Fossan: It represents his opinion of production from this tract; is that the long and short of it?

Mr. Fullerton: Yes.

Member Van Fossan: For what purpose are you offering to prove it?

Mr. Fullerton: To prove the potential production from that area.

Member Van Fossan: And for no other purpose?

Mr. Fullerton: And for no other purpose.

The Presiding Member: Do you have any objection to that?

Mr. Davis: Only on the general ground that there is no comparable sales shown in reference to

that particular area and, therefore, testimony as to its probable production is immaterial. But I think that when they get through with the testimony of this witness it will appear it is not of much consequence whether he is heard or whether he is not.

The Presiding Member: On the statement of Government counsel I will overrule the objection.

Mr. Adams: Exception.

The Presiding Member: We will receive it for the limited purpose he has announced.

(The previous question propounded to the witness read by the reporter as follows: "What did you do by way of preparation or study or investigation in following out the instructions given you?")

A. Nothing.

Q. What information or knowledge or data did you use in preparing the pencil memoranda which you have produced here? A. I used the figures that were already obtainable from the production from the Terrell wells, and past experience.

Q. The respondent requests that the copy of the letter identified by the witness, dated July 16, 1919, addressed to E. R. Brown and containing in the lower left-hand corner the initials MJMcL, be marked for identification as Respondent's Exhibit AC. * * *

Q. Respondent requests that the sheets in pencil which the present witness has identified as being in his handwriting and made by him be marked for identification as Respondent's Exhibit AD. * * *

Q. I show you, Mr. McLaughlin, Respondent's Exhibit AD and I refer you to the first page and the last item of the tabulation which is marked, "Magnolia-Duke seventy acres." I refer you also to a map which is marked in the lower right-hand corner as Joint Exhibit KK-1 and state to you it is stipulated between counsel that this is a copy

of a Joint Exhibit KK-1 now in evidence in this record, and I ask you to locate, if you can, the acreage marked on Respondent's Exhibit AD and designated as seventy acres, upon this Joint Exhibit KK-1. A. That is where I understand the seventy acres is located (indicating on map).

Q. I note that you point to a rectangular square on KK-1 colored in pink and which is approximately the east half of the southwest quarter of Section 5 of the H. T. & B. Survey in Comanche County, Texas. Is that the area which you intend to designate as the item referred to by "Magnolia-Duke seventy acres" on Respondent's Exhibit AD? A. Yes, sir.

Q. I refer again to Respondent's Exhibit AD and ask if you can locate the first item on the first page which is marked "Echols and Terrell seventy and five-eighths acres"? A. No, I can't do that.

Q. Can you locate the second item which is marked "J. W. Carruth fifty-two acres"? A. No, I can't do that on that map.

Q. How about the third item, J. D. Moorhead one hundred and thirty-six acres? A. I can't do that on that map.

Q. I refer you to Joint Exhibit KK-1 and to an irregular piece in the western half of the W. H. Funderberg Survey which is marked with a double cross in green and red, and which lies just west and a little north of the town of Desdemona in Eastland County; and I will ask you if that block is the one which you refer to in the second item of your tabulation as the J. W. Carruth fifty-two acres? A. I can't identify those lots put on in that color, and I don't know the amount of acreage they contain, and I wouldn't want to make an affidavit to any of them.

It was on the basis of the pencil memorandum designated Respondent's Exhibit AD that I wrote the letter to Mr. E. R. Brown, dated July 16, 1919, designated as Respondent's Exhibit AC. The third column of the tabulation Exhibit AD represents the estimate which I made at

that time of the potential production in barrels of oil per acre from the properties of the Hogg Creek Oil Company.

Q. I refer again to Respondent's Exhibit identified as AD and to the third, fourth and fifth pages of that memoranda, and I ask you if that data which is stated there was the basis, in whole or in part, for the estimate of production per acre in barrels of oil which appear on the first sheet of the memoranda?

Mr. Adams: Just a moment, before you answer. Objected to by the petitioner upon the ground the witness has heretofore testified he made no investigation of the properties referred to.

The Presiding Member: Overrule the objection.

Mr. Adams: Exception.

A. Yes.

Mr. Foley: The respondent offers in evidence the copy of the letter heretofore marked for identification as Respondent's Exhibit AC.

Mr. Adams: Petitioner objects to the foregoing offer as not material or relevant to any issue in this cause; * * * Objected to further on the grounds it appears from the testimony of this witness that the witness prior to writing such letter did nothing by way of investigation or inspection of the properties therein referred to.

Mr. Fullerton: The first portion of the objection, of course, should be seriously considered when I make the offer of the testimony for the general purposes, but I believe it is not pertinent under the limited offer.

The Presiding Member: The letter contains data furnished by this witness, namely his estimate of production?

Mr. Fullerton: No, the memorandum which accompanied that letter.

The Presiding Member: But it is introduced for that reason, that it contains this estimate of production?

Mr. Fullerton: Yes.

The Presiding Member: For that limited purpose it will be received. The objection will be overruled.

Mr. Adams: Exception.

This exhibit (Respondent's Exhibit AC) reads as follows:

"Dallas, Texas.
July 16th, 1919.

Mr. E. R. Brown.
Building.

Dear Sir:

I am submitting, for your information, a report showing the approximate number of acres in, and the prospective value of a half interest in certain leases in Eastland County, Texas, owned by the Hog Creek Oil Company.

This interest includes one-half of 3120 acres, the other half of which is owned by our Company. Also a half interest in about 1140 acres, the other half of which is owned by different companies.

The Hog Creek Oil Company's portion of this acreage is about 2130 acres, and in my opinion, at least one-half of it will be productive.

A well will probably be drilled upon each ten acres of this half, at a total cost of about three and three-quarter million ($3.750,000.00) dollars, and each acre produce at least ten thousand (10,000) barrels of oil, or a total of ten million, six hundred and fifty-thousand (10,650,000) barrels.

Figuring the value of this property on this basis, I am of the opinion that it would not pay out in

less than five years, if purchased at a cost of six million ($6,000,000.) Dollars.

I have tried to be conservative in making this estimate, but the figures may be badly out of line.

Yours very truly,

MJMcL-w"

Mr. Foley: The respondent offers in evidence six sheets in pencil previously identified by the present witness as being in his handwriting and heretofore marked for identification as Respondent's Exhibit AD.

Mr. Adams: Petitioner would object to the foregoing offer upon the several grounds just stated with respect to respondent's offer of Exhibit AC and for the further reason that the witness has declared himself unable to identify the entries contained in the memoranda marked Exhibit AD with respect to the map, Joint Exhibit KK-1, heretofore offered in the case, or otherwise to identify or locate the properties therein referred to. Petitioner desires further to make the following objections with respect to the offer of the above Exhibits AC and AD, that the same pertain solely to the making of an offer for the purchase of the properties, which offer has not been shown to have been accepted or given any consideration upon the part of the offeree with a view of acceptance.

Q. Let the record show that the offer of the respondent with respect to Respondent's Exhibits AC and AD is not limited to any purpose, and is expressly not limited to the purposes heretofore expressed at the request of petitioner's counsel.

Mr. Fullerton: At the present time we make the offer of the document as limited, preserving the

right to make a general offer. That is an offer for all purposes later.

The Presiding Member: Those exhibits are the pencil sheets giving the data?

Mr. Fullerton: Yes.

The Presiding Member: Very well. They will be received (for Exhibit AD see Folder of Unprinted Exhibits).

Mr. Adams: Exception.

The Presiding Member: Note the exception.

The following excerpt is the entry appearing in the Exhibit AD, identified by the witness as pertaining to the Magnolia-Duke seventy acres lying within the Tex-Penn block of leases "Magnolia-Duke (Farm) 70 (Acres) 10,000 (Prod. per acre) 700,000 (Potential Prod.)."

*Cross-examination by Petitioners.*

When I became assistant manager of the producing department of Magnolia Petroleum Company July 1, 1919, my duties extended to the Desdemona area. Previously to that time it had not been under my jurisdiction. The letter of July 16 was written shortly after I came to Dallas from Tulsa, Oklahoma. I never checked out whether the estimate appearing on page 1 of Exhibit AD under the heading of "Magnolia Duke" proved to be correct. The matter of production of oil was under my charge from the time of my coming to Dallas. Without specifying the number of barrels, I would say that the ultimate recovery of the Magnolia-Duke seventy-acre lease was not greater than 700,000 barrels. Upon examining the Exhibit AD, I made no entry in any part of that exhibit estimating the potential production from the S. T. Peake lease located approximately one-half mile westwardly from the Magnolia-Duke lease. I didn't estimate any production would

be obtained from the S. T. Peake lease. At that time it was my estimate that the time within which a producing property should pay out in order to be profitable, we thought four years should be allowed. About August 1st, 1919, the most intensive drilling in the Desdemona Field was going on right around the Town of Desdemona. I only went there about the 1st of July. The field had been under pretty good headway when I got back. At that particular time it was right around the Terrell and the Town of Desdemona. That was the area where the greatest amount of activity was going on. That was where the greatest volume of production was being obtained. In general character, the wells there, compared to the part of the field that had been drilled earlier, were much larger. After I came with the company July 1st we did very little drilling in any district south of the town site. As I recall it, the Duke is the only lease we had, maybe we had one or two others, but we did very little drilling down there. I think that was drilled before I got back down there July 1st, 1919. I can't remember whether we drilled up all the locations on the Magnolia-Duke seventy-acres lease. I can't recall whether we drilled seven wells on it. We did not to my knowledge drill any wells on the Peake lease lying about one-half mile to the west of the Duke. The next area which our company drilled after I came there lay a considerable distance westwardly around the Hankins and Carruth leases. It was from those two leases and the town site area that our company obtained the bulk of its production in the Desdemona district. The character of the production or the productive life of the wells drilled in the Desdemona area under my supervision was very short-lived. From coming in at a very large initial production, the production was not sustained. From my observation that could be said to be characteristic of the wells in that field. In certain areas of that field, wells pro-

duced gas and little or no oil. While I can't cite any specific case, I believe that was the experience with some of the Magnolia Petroleum Company wells. To the best of my knowledge, there was no commercial market for gas production in that field. There were no trunk or gas fuel lines being laid into that field. There might be minor sales to drilling contractors on adjoining leases but the revenues from such sales would be negligible.

*Redirect examination.*

As to Exhibit AD not showing any estimate of potential production of the Peake lease which lies a little southwest of the Magnolia lease, that seems to have been overlooked. It is not included in my report. I just don't remember anything about it. I knew when I was making the estimate of the potential production that the Magnolia Company was contemplating the purchase of the properties which I was considering. I do not know whether my estimate was required for consideration when they considered such purchase.

Mr. Adams: Petitioner moves to strike the testimony of this witness as incompetent and immaterial under the issues in these cases; no basis for the admission thereof for the purpose of valuation or comparison or relation in dates having been shown, and for the several reasons hereinbefore stated at different parts of the testimony as given.

* * * * * *

Mr. Adams: We submit that as a motion upon the entire testimony of the witness the testimony should be stricken.

The Presiding Member: Your motion would go to a more limited matter, namely——

Mr. Adams: Yes; our motion includes the limited purpose for which it has been received.

The Presiding Member: It will be denied.

Mr. Adams: Exception.

Mr. Fullerton: I will offer all of the deposition with the two exhibits, Respondent's Exhibits AC and AD, for the limited purpose before stated.

The Presiding Member: The direct——

Mr. Fullerton: The direct, cross-examination and redirect examination.

The Presiding Member: We will receive it for the limited purpose.

Mr. Adams: Exception.

The Presiding Member: Exception noted.

At the resumption of an ensuing session of the Board, the formal identification of the geological cards of the Gulf Production Company was corrected from "Exhibit CG" to read "Respondent's Exhibit CT," and without objection the geological cards embraced in such exhibit were tendered in evidence generally for all purposes.

The respondent offered in evidence a tabulation showing the date the bankers, Prichitt & Co. and E. W. Clark & Co., made payment of the $20,225,000. It was received as Respondent's Exhibit CW (see Volume of Exhibits).

Respondent had marked Respondent's Exhibit CX for Identification a pamphlet entitled "Decline and Ultimate Production of Oil Wells, with Notes on the Valuation of Oil Properties," by Carl H. Beale, issued by the Bureau of Mines, Department of the Interior, being Bulletin No. 177, Petroleum Technology 51. This exhibit was admitted, but later respondent withdrew the same from the testimony.

The respondent had marked as Respondent's Exhibit CY for Identification a pamphlet entitled "Petroleum in 1919 to 1921," by G. B. Richardson, issued by the Department of the Interior, U. S. Geological Survey.*

The respondent offered in evidence a map, with leave to substitute an enlarged photostatic copy thereof, appearing on page 6 of a pamphlet entitled "Professional Paper

*This exhibit was later admitted in part; for portion admitted, see pages 1473 to 1474.

129, a Short Contribution to General Geology, 1921," by David White, Chief Geologist. The purpose of the offer was to show the regional geology of the Great Bend Arch. Petitioners objected to the offer as irrelevant, that the map is not self-probative by the mere fact that it happens to be a Government publication, and no foundation has been laid that the same is a true and correct representation of the geology of the region.

The Presiding Member: What is the question on the first point, when you say it is not properly receivable? Is that not a part of a Government publication?

Mr. Davis: Yes; but I think that because it is published in a Government publication does not make it ipso facto admissible. I think the Governmental publication is testimonial when it relates to the transactions of the Government and self-probative * * *.

The Presiding Member: I will overrule the objection and receive the exhibit.

Mr. Davis: Exception.

The map so offered was received in evidence, marked Respondent's Exhibit CZ.*

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E. G. WOODRUFF, a witness called on behalf of the respondent, was duly sworn and testified on direct examination as follows:

I received my primary education in the public schools and at an academy at Weeping Waters, Nebraska. In 1896 I entered the University of Nebraska and received bachelor's degree in 1901. I taught for two years and returned to the university in 1903 to 1904 for a master's

* See folder of Unprinted Exhibits. It was further stipulated that the contours appearing on this map, according to the Texas Bulletin mentioned, purport to show the top of the Ellenberger Lime.

degree, which I received in 1904. I taught geology and mineralogy for two years at the University of Oklahoma, then went to Harvard for a year of special work in geology. While at the University of Nebraska I was an assistant in the Nebraska Geological Survey, and in the summers of 1904, 1905 and 1906 I was field assistant on the United States Geological Survey. From 1907 to 1914 I was in the regular employ of the United States Geological Survey. For four years I was geologist for the Texas Company, being chief geologist for a time. After that I was chief geologist for the Oklahoma Producing & Refining Corporation for three years. I was then in charge of land work and geology for the New England Oil & Pipe Line Company for about two years, since which time I have been engaged mostly in consulting work. While I was with the United States Geological Survey my work was in the Panhandle of Texas and for two years I was with parties in Wyoming and did some work in Oklahoma. In the summer of 1907 I had charge of a party on the west side of Big Horn Basin in Wyoming. I was assistant geologist in the Geological Survey. I prepared reports and bulletins which are published in the bulletins of the United States Geological Survey. In 1910 and 1911 I was assistant chief of a section investigating the fuel resources west of the Mississippi River. I had under my direction in one year twenty-two parties. I also investigated oil shale in Colorado and Utah. This was also reported in one of the bulletins of the United States Geological Survey. While I was with the Texas Company I examined the Waggoner Ranch near Electra, Texas, reported a structure across the northeast part of it, which structure was later developed. I also spent time studying the area in North Central Texas in the Counties of Shackleford, Comanche, Eastland and various others. While with the Texas Company I worked at Strawn, Breckenridge, Ranger, and also in Cuba, Mexico, Montana, Wyoming and Illinois. While with the

Texas Company I received the published notices of the sale at auction of leases to be sold by the Indian Agent of lands in Osage County, Oklahoma. I prepared data and recommended the price which should be paid for these leases. I would say that half of the prices for which these leases were sold were above the prices that I have fixed. I have made investigation of oil fields outside of the United States, in Canada, Cuba, Mexico, Venezuela, Trinidad, Peru, Bolivia and Chile. The Texas Company purchased an eight-acre tract in the Tampico Field on my recommendation, which was very profitable. I made an examination of Cuba for my company and it acted on my recommendation not to go into Cuba. I made an examination at Goose Creek, Texas, where there were some shallow wells, and one that was drilled deeper was reported at 8,000 barrels. My company was not able to purchase at the figure which I fixed. The company had some leases at Strawn, which is twenty or twenty-five miles northeast of Ranger. The leases were about to expire, so a well was drilled, known as Parks No. 1. It preceded the McLoskey which brought in the Ranger town site.

While I was with the Oklahoma Producing & Refining Corporation the company was offered a large block of leases in the vicinity of Ranger and other places in Comanche, Stevens, Erath, and, I think, in Eastland Counties by the T. & P. Coal & Oil Company. My company was to receive half the leases and stand the expense of drilling a number of wells. My company did not take hold, but the development, I think, amounted to over $10,000,000. Generally the result was not favorable.

I also had experience in Woodson County, Kansas, where the company had a small gas well. I worked out a structure along the Gridley Anticline, nearly all of which proved productive. A well came in in Butler County, Texas, and I was requested to work out a structure, which I did. My company purchased eighty acres which showed

a profit from operation of a million and a half. The New England Oil & Pipe Line Company purchased on my recommendation a producing lease in Osage, 160 acres, for which it paid $160,000, which proved to be a profitable venture. While I was employed by the Clayton Oil & Refining Company in 1922 that company made a loan on property which I appraised at $1,700,000. The loan of $700,000 was paid. The company added to it property valued at $500,000 and sold the whole to the Texas Company for $4,500,000. I also made an unfavorable report on leases in northern Chile.

My salary with the Texas Company was $6,000 a year; with the Oklahoma Producing & Refining Company, $7,200 a year; with the New England Oil & Refining Company, $7,500; with the Clayton Oil & Refining Company, $10,000 a year. I am a member of the Tulsa Geological Society, the Geological Society of North America, and, I believe, I am on the rolls of the Nebraska Academy of Science.

I have examined the map, Exhibit AS, and have been on the land covered by the map in Eastland, Comanche and other counties. I made one trip there in 1918 or 1919, was near Desdemona at that time, and in the fall of 1932 made another trip.

I have read the testimony of Mr. Godfrey, Mr. Oliver, Mr. Donahue, Mr. Davis, Mr. Simon, and part of Mr. Powers. I also heard some of the witnesses and examined depositions of Mr. Moody and an officer of the Sun Oil Company.

Q. Now, Mr. Woodruff, I want to ask you for your opinion of the fair market value of certain properties here, which are depicted on the various exhibits, one of which is Respondent's Exhibit AS, and are known in this hearing as the Tex-Penn Duke-Knoles.

In using the term "fair market value" I mean the price at which a seller, who is willing but not obliged to sell, and a buyer, who is willing but not obliged to buy, will

deal, both having knowledge of the facts involved. This definition contemplates that such price be in cash or its equivalent, and ascertainable with reasonable certainty and realizable within a reasonable time, considering the character of the property to be valued.

In forming your opinion, for which I am about to ask, you are to exclude from consideration all facts occurring after August 1, 1919.

Counsel for respondent offered in evidence the exhibit previously marked for identification as Respondent's Exhibit CX, a pamphlet entitled "Decline and Ultimate Production of Oil Wells, with Notes on the Valuation of Oil Properties," being Bulletin 177 of the United States Bureau of Mines.

Mr. Davis: Objected to.

Mr. Fullerton: Now, it will be necessary for me to question the witness in regard to which portions of this he wishes to use, because the petitioner objects to the introduction of the whole document.

* * * * * *

Mr. Fullerton: The offer of the exhibit which has been marked for identification CX is limited to the portions dealing with the Glenn Pool and the Cushing Oil Field, beginning on page 134 and terminating on page 145.

Mr. Davis: We object to that, your Honor, please. This is matter dealing with the production and decline in production in pools in the State of Oklahoma, and Cushing Field in the Creek Nation in the State of Oklahoma. It staggers our imagination to know how testimony as to those two pools is going to illuminate the question as to an area 450 miles or such matter away from the locus in quo.

Mr. Fullerton: In the first place, it is a Government publication. In the second place, we will

show by this witness that these were the most important oil fields that were developed sufficiently, so that the ultimate production could be known.

In the third place, these are the same pools which are mentioned in the evidence already in, namely, the income tax return Form O, which is a portion of the return of the Tex-Penn Oil Company for the year 1919, and are the pools which the petitioner represented as being comparable when he filed the income tax return.

Mr. Davis: If the Court please, I simply do not understand what that means. It is true that this is a Government publication, but there are a great many laudible publications, some of them which deal with Alaska and some of them which deal with the Philippines, but that does not make them competent in this case.

I do not know what counsel means by saying that, at any time, we represented these as comparable pools with the pools in suit; and I do not understand we are trying this case on the basis of our income tax returns at all.

The Presiding Member: I know, but what I would like to know is, on the point mentioned, namely, that you have represented to the Government that these two pools are comparable, and I take it that that was done in fixing the amount of depreciation. If you have so represented, it is proper to use these pools as the basis for determining the question.

Mr. Davis: Will counsel point out the representation, if he has it?

Mr. Fullerton: That is Respondent's Exhibit T.

Mr. Davis: Would your Honor like to see this extract?

(The document was handed to the Presiding Member.)

The Presiding Member: Did you wish to say something?

Mr. Davis: Unless you hold with me, I want to say something. What I want to say is this, your Honor, please: Let us get in focus just what this situation is. In this income tax return the taxpayer is endeavoring to establish the value as of the date of discovery, or within thirty days thereafter, for the purpose of depletion, and in that return he alludes to the Glenn and Cushing Fields in the manner in which you have read.

Now, it is suggested that, because he did that, in order to fix a value on September 14, 1918, the Government can predicate the value on August 1, 1919; a year later; and can ascertain not the discovery well, but the fair market value of the properties on that critical date, and can put in evidence a Government publication discussing these two foreign fields.

I submit there is no connection between those two fields at all; it is a different inquiry, it is a different purpose. The use which was made of them was only a tentative use by reference; they are not adduced as evidence. Now, it is proposed to make them evidentiary here, and predicate, as part of their hypothetical question—predicate the fair market value of these properties on August 1, 1919, on this Government publication. We submit it is not relevant for that purpose at all.

The Presiding Member: Suppose they do that and then it is not shown that it is proper to have them in as an item, would not that simply serve to weaken their testimony?

Mr. Davis: Well, I think it does this, if the Court please—and, of course, I am offering this whether my friend's hypothetical question is com-

pleted or not, but I think it is necessary to any hypothetical question—my understanding of the rule is this:

That if a hypothetical question put to a witness embraces elements which are irrelevant to the case, or embraces the assumption of facts not bottomed upon proof, the hypothetical question, if objected to, must be stricken out, and the hypothetical question and the answer may be stricken out on motion. The hypothesis must stay within the limit of the relevant facts actually proved, and an expert cannot be invited to bottom his conclusion upon facts which are irrelevant to the issue in the case.

That is a risk, of course, which we are not compelled to warn our adversaries of. But since this has come up, definitely and specifically, we make the objection to this particular testimony now; and there are some other things which may be said of it; and when the question is completed, we want to be heard about those other things.

Mr. Fullerton: In so far as the matter of date is concerned, the Board will note that in the respondent's income tax return, which is the beginning and basis of all litigation, these words are used: "Since we can be guided only by conditions up to June 30, 1919"—and then the mention goes on—"this estimate cannot be considered exact, although it is believed that, for the conditions with which it is to deal, no better one can be made"; and then mentions the Glenn Pool and the Cushing Pool and makes the comparison, with the data in regard to the taxpayer's property.

In the light of conditions as to the taxpayer's property up to June 30, 1919, it is the basis upon which the petitioner, itself, has based its data in so far as depletion is concerned, and I do not under-

stand that we should make a different valuation—that is, that we should value according to a different principle for depletion than for the determination of profit or fair market value.

The Presiding Member: You have in this case a different state of facts on August 1st than what you had at the time of the discovery.

Mr. Fullerton: We do, but the form states that we can be guided only by conditions up to June 30, 1919, when they took into consideration conditions within thirty days, or twenty-five days, as the respondent views it, of the time this transaction took place, and considered the Glenn Pool and Cushing are the comparable fields from which data should be used in order to compute the oil reserve. In this particular property we submit that the respondent should be allowed to introduce evidence of the ultimate production, which is pretty nearly the same thing as the oil reserve, or as proof of the oil reserve in the fields which the taxpayer has mentioned.

The Presiding Member: I assume you are going to include in your question the matter of the acceptance of the Cushing Field and the Glenn Field as comparable fields. Now, I do not know whether there is enough in the way of an admission here that would warrant us in accepting as a fact that those pools are similar, even though the taxpayer might cite it. If it is not, do you not weaken your testimony here by embodying that in the question, because if we reject it then where do you get off at?

Mr. Fullerton: I do not believe that the taxpayer should be permitted to blow hot and cold. I do not believe they should be permitted to say: Here is a comparison for the purpose of determining depletion, but it is not comparable for the purpose of determining gain.

The Presiding Member: Maybe not, but you cannot get around the fact that there are different dates involved and the material thing here is the date of discovery, thirty days thereafter. There is a lot of testimony that cannot be disregarded. The facts are different on August 1st from what they were at the date of discovery.

Mr. Fullerton: I have given weight to the fact they said they could be guided by conditions up to June 30, 1919.

Mr. Davis: If we did say that, that is no sign the Board can be guided by it now.

Member Van Fossan: On what theory do you aim to hold them to this suggestion that these two pools are comparable and make that all determinative of the issues here before us? Is not one of the questions preliminary to value the question as to what are comparable things?

Mr. Fullerton: I would think that is for the determination of the Board, but here is the representation of the taxpayer——

Member Van Fossan: Are you offering it as an admission against interest?

Mr. Fullerton: An admission against interest is a matter which makes it admissible. The matter is admissible because it is a Government publication. The taxpayer's objection, as I understand it, is that it is not relevant because it is not shown to be comparable.

Mr. Davis: My objection is that the testimony about those pools is wholly irrelevant.

Mr. Fullerton: I so understood it.

The Presiding Member: Assuming that you were permitted to have your witness predicate his answer upon the statements made in this Form O and it was subsequently determined they were not based

on all the data introduced, that they were not comparable, where would the answer to your question be? How much weight do you expect the Board would give to the remainder of the question after eliminating these particular premises?

Mr. Fullerton: My position was that having represented that these are comparable fields——

Member Van Fossan: Do you think that makes them comparable?

Mr. Fullerton: No, but the taxpayer is not in position to deny it.

The Presiding Member: That is not a representation of fact. It is really an opinion on facts he is giving.

Mr. Fullerton: A representation does not have to be a fact in order to prevent the other party from turning around and taking the other view.

Member Van Fossan: Are you trying to work out an estoppel, or something of that kind?

Mr. Fullerton: It is sometimes spoken of as quasi-estoppel.

The Presiding Member: Do you want a ruling?

Mr. Fullerton: If you please.

The Presiding Member: I will receive the testimony.

Mr. Davis: Exception.

The Presiding Member: But I am going to tell you now that I do not think this serves as an admission and I am not letting it in on that ground. I am receiving it subject to being connected up. If it is not connected up, it will leave us with a premise in the hypothetical question that will not be proven, as we see it at this time. You may go on that basis. That is the way we look at it at this moment.

Mr. Davis: Exception.*

* This exhibit (CX) subsequently withdrawn by respondent (see p. 1474).

Counsel for respondent offered in evidence the exhibit previously marked as Respondent's Exhibit CY for Identification entitled "Petroleum in 1919 to 1921," issued by the United States Geological Survey.

Mr. Fullerton: * * * May I have a ruling on the other exhibit which was marked for identification Respondent's Exhibit CY? It is the United States Geological Survey pamphet, showing production and consumption of crude petroleum. It includes the years 1916, 1917, 1918 and 1919.

Mr. Davis: You are offering the whole pamphlet?

Mr. Fullerton: No, we are offering only the tabular portions.

* * * * * *

Mr. Fullerton: I am reading from page 261 of Respondent's Exhibit marked for Identification CY and offer this portion of the exhibit in evidence. This is petroleum produced in the United States:

For 1917—335,316,000 barrels of the value of $522,635,000.

For 1918—355,928,000 barrels of the value of $703,944,000.

For 1919—378,367,000 barrels of the value of $760,266,000.

Page 254: 1918: Condensed summary of statistics of crude petroleum, production figures, 355,928 barrels; imports, 37,736,000 barrels; withdrawn from stocks, 23,510,000 barrels; exports, 4,901,000 barrels; added to stocks, nothing. 1918: Production, 378,367,000 barrels; imports, 52,822,000 barrels; withdrawn from stocks, nothing; exports, 6,019,000 barrels; added to stocks, 4,708,000 barrels.

I read from page 291: Indicated consumption delivered to consumers of domestic and imported crude petroleum, 1909 to 1921, by years:

For the year 1917—378,317,000 barrels.
For the year 1918—412,273,000 barrels.
For the year 1919—420,462,000 barrels.

Mr. Davis: Objected to as irrelevant. No question raised as to accuracy or competency.

The Presiding Member: Objection overruled.

Mr. Davis: Exception.

Mr. Fullerton: We withdraw the pamphlet as originally offered. As a pamphlet we will ask that it remain in the record and then the figures are available. The figures read are the only portion offered.

The Presiding Member: We do not need the exhibit. Before we start on something else I think we had better adjourn. To-morrow morning, Mr. Fullerton, when we start in, I would like a statement from you as to how you expect to connect up this data about the Cushing Field. If you do not expect to connect it up, I should entertain a motion to strike. I do not want to get it in this question and then have to eliminate it afterwards.

Mr. Fullerton: We will prepare such a statement.

* * * * * *

Mr. Fullerton: Now, in accordance with conference of Government attorneys last night, I will withdraw the offer of Respondent's Exhibit CX, which is the portion of the Bureau of Mines pamphlet dealing with the Cushing and the Glenn Pool production.* I will also withdraw the hypothetical question as read. I will now restate it.

The Presiding Member: Are you going to restate the entire question?

Mr. Fullerton: Yes.

* Previously admitted over petitioner's objection, with exception noted (see p. 1472, *ante*).

*By Mr. Fullerton.*

Q. You may assume, Mr. Woodruff, for the purpose of your testimony, the following facts as correct: That the Tex-Penn Duke-Knoles leases consisted of approximately 3,479 acres located in Comanche, Eastland and Erath Counties, Texas; and that the location and acreage of these leases, the location of the wells and dates of completion on the Duke-Knowles Tex-Penn leases, and the location, dates of completion of all wells in the Desdemona Field in the area covered by the map are shown with substantial accuracy on Respondent's Exhibit AS; that Petitioner's Exhibit 30 shows as to the Tex-Penn group, Duke-Knowles leases, the number of wells drilled and completion date of each well, the total production of oil from the oil wells of this group to August 1, 1919, and the total monthly production from each well on these leases, and the monthly production of each well on these leases to the end of July, 1919. You may further assume that Petitioner's Exhibit 73 correctly shows the production of the Magnolia-Hogg Creek No. 1 well on the J. N. Duke leases by months to August 1, 1919; that Respondent's Exhibits AR and CT show the records of the Gulf Production Company as to the wells completed in the Desdemona Field prior to August 1, 1919; that 241 wells in Eastland, Stevens, Comanche and Erath Counties produced 13,167,495 barrels of oil prior to July 16, 1919, and were still producing at the rate of 74,604 barrels of oil daily; that twenty-one wells on the Hogg Creek leases, and in which the Magnolia Petroleum Company acquired a one-half interest in September, 1918, produced 828,343 barrels of oil to the end of July, 1919, equal to 39,445 barrels per well, and an average combined daily production for twenty-one wells of 14,392 barrels in the month of July, 1919.

I will withdraw and restate the last sentence. I am going to restate the last sentence.

You may assume that twenty-one wells on the Hogg Creek leases in which the Hogg Creek Oil Company owned a one-half interest on August 1, 1919, that phrase being used to designate the property merely, produced 828,343 barrels of oil to the end of July, 1929, equal to 39,445 barrels per well, and an average combined daily production for twenty-one wells of 14,392 barrels in the month of July, 1919; that the regional structure as known at August 1, 1919, is shown on Respondent's Exhibit BZ; that the log of the discovery well is shown in Form O, which is part of Respondent's Exhibit S; that the cost of drilling a well in the Desdemona Field was $37,398, as shown in Petitioner's Exhibit 75; that the cost of production and operation was 25 cents per barrel; that the pipe line runs from the Desdemona Field prior to August, 1919, are shown by Respondent's Exhibit AW; that the applicable prices of crude oil are shown by Stipulation 8 in these appeals.

Assuming the above facts to be true, and considering also what might on August 1, 1919, have been reasonably anticipated from those facts, and in the light of your experience, are you able to form an opinion of the fair market value as of August 1, 1919, of the Tex-Penn Duke-Knowles leases in Eastland, Erath and Comanche Counties, Texas? Answer yes or no. A. Yes.

Q. Do you require any further facts in order to form that opinion? A. No.

Q. Have you formed such an opinion? Answer yes or no. A. Yes.

Q. Would that opinion be modified in any respect if the date as of which you are giving that opinion was July 25, 1919, instead of August 1, 1919? A. No, sir.

Q. Being particularly careful not to state the amount of the value in dollars and cents for the Tex-Penn Duke-Knowles leases or any part of them, please state to the Board the essential factors, methods and reasoning you

have used in forming your opinion of the fair market value of these leases. Now I suggest that you state this as briefly as possible. A. To arrive at my opinion I studied the wells on the block of leases, their depth, age, production, grouping, the amount of acreage each well might be expected to drain, etc., also the amount of acreage which appeared not to be condemned and not proven as productive; also the amount of acreage which had been proven productive by the wells drilled on the leases and by the offset wells. The factors which I used were to take the number of wells on the block, including the Duke well of the Magnolia Petroleum Company, being seven in all, and find from the total production the average for each well up to August 1, 1919. I find that eight acres per well was the average size of the area drained by each well. It was the custom to place one well to eight acres in fields of this character. I therefore assumed that the production of each one of the average wells would drain eight acres, and by dividing by eight gives me the figure that each acre would be expected to drain. I then multiplied the proven acreage by the production of each acre, which would give me the total expected production, and multiplying this by $2.25 would give me the amount which might be expected to be obtained from the proven area. I have given no value to the unproven area. From the gross amount I deducted one-eighth royalty, which leaves the amount of money the operator had for his operations. From this I deducted the operating costs of 25 cents per barrel, as well as the figure which the required number of wells would cost, at $37,500 per well, and this would give me the amount which the operator might expect to retain from the operation. I then reduced that amount a considerable per cent. in order to obtain a reasonable figure which he might pay. I also followed that same computation through on a ten-acre basis, as well as an eight-acre basis. I also gave consideration to the general and local geology. Another factor that

I considered was the location of the Duke-Knowles leases as a block; also their position as to accessibility of supplies and the direction of operations. Another factor considered was the depth and character of the drilling; another the cost of drilling; another the amount of oil which a prudent operator could expect to recover; also the hazard of the industry, the cost of such recovery, market and market price for the oil; the grade of the oil; the size of the block of leases and its compactness, namely, that the group is compact rather than a scattered lot of acreage, the market for large blocks of leases for production, the determination of the value by consideration of the above factors and comparison with pools whose production is known.

I also gave consideration to the market for oil leases in 1919.

Q. Now, Mr. Woodruff, what in your opinion was the fair market value on August 1, 1919, in dollars and cents, of the Duke-Knowles leases of the Tex-Penn?

Mr. Davis: If the Court please, I object to that question on the ground that the hypothetical question put includes matters irrelevant to the issue, and specifically this: Among other facts he is invited to assume is the fact that 241 wells in Eastland, Stevens, Comanche and Erath Counties produced 13,167,495 barrels of oil prior to July 16, 1919, and were still producing at the rate of 74,600 barrels of oil daily. We submit that is an entirely irrelevant fact in connection with these particular leases located in Comanche County. It is irrelevant, however, in toto, and is particularly irrelevant in so far as Stevens County is concerned, as to which there has been no inquiry whatever, and which embraces fields which have not been taken into the purview of this testimony.

The Presiding Member: The objection is overruled.

Mr. Davis: Exception.

The Presiding Member: Note the exception.

A. $13,000,000.

In arriving at my opinion I gave consideration to the regional geology. The Bend Arch was well known as a big anticline in 1919. That was considered a very promising region for petroleum because the smaller wells had come in along the axis of it and considerably down the slope.

I also gave consideration to the local geology. By studying the well cards in the record we found there was a local structure along this general Bend Arch anticline which should be favorable for the accumulation of production. Using Exhibit AS as a base map, we made a map based on the well records.

The green coloring shows the area of the Tex-Penn leases. The lines which form an oval on or near the green coloring show the elevation above sea level of the top of the lime. You could hope to find oil in the formation at or slightly below the top of this lime. It is in this lime group. Our information shows that there was a rather circular anticline. We have a peculiar name that we use for this type. It is a dome, which is generally considered as the best type of anticline for production; with the Tex-Penn leases—part of them near the crest and laying down the slope slightly in the structure, but all except perhaps a little at the south within the structure. The top of the anticline is generally considered the most favorable for the production of petroleum. The Tex-Penn leases were found to be productive of oil on the structure and there was oil both to the south, west, north and northeast of this block of leases on the structure. It therefore looked as though it was a pretty good thing to be produc-

tive, that this structure was. All of the Duke-Knowles leases are within the general anticline structure. The drilling at Desdemona was approximately 500 feet less in depth than at Ranger and therefore the cost of production would be less. I should consider the underground conditions as they related to drilling just about the same as at Ranger, only cheaper. The oil was a good grade of refining oil, free from sulphur, free from conditions which make pipe lining difficult, and very desirable for refining purposes. The fact that the leases were in a group made the group very desirable. I made a map showing the location of the wells on the Duke-Knoles leases. The map is marked for identification Respondent's Exhibit DB (see folder of Unprinted Exhibits). The structural map previously referred to was marked Respondent's Exhibit DA (see Folder of Unprinted Exhibits).

Referring to Exhibit DB, I have shown the Duke-Knoles leases in light green. The dry holes I show by circling the wells in a red color. I found a group of dry holes just to the west of the Tex-Penn block; two dry holes on the northwest edge, and some to the southeast. I marked the gas wells in blue, three of them on the Tex-Penn leases, two near the center of the block and one to the northwest. There is a group of them just to the north of the Tex-Penn block and one considerably to the north and three to the northwest. The dark blue alone represents the gas wells. Wells from ten to ninety-nine barrels are marked in brown. Wells from 100 to 499 barrels are shown in yellow. I am classifying the wells by the initial production as shown on the map from the sand cards. I was not there to gauge the initials myself, so I am accepting that data. Wells from 500 to 999 barrels are shown in green and wells of a thousand barrels or more are shown in light blue.

Referring again to Exhibit DA, which is the structural contour map, we would expect all of the area within the anticline to be productive, if there was oil enough in the

region to fill it. It is a rather large structure to be filled, if we had ideal conditions. We would expect the best part to be within the 1200-foot below sea level contour; another part within the 1250-foot, etc. We would expect from this structure map alone all of the Tex-Penn block to be productive except possibly a little to the south in the Jones survey. We often find that the production clings down the sides of these structures rather than on the top of them, due to underground peculiarities.

I next gave consideration in my study to the amount of production of oil. The amount of production of the wells and the area that had been proven by the drilling.

Using the base map AS, I have made a map now identified as Exhibit DC (see folder of Unprinted Exhibits) and placed the Tex-Penn block of leases in two colors.

In the oil industry a dry hole condemns only the area included within the hole, but I have taken a more liberal view of it and have drawn a line halfway between a dry hole and the nearest producing well and classified it as unpromising. It is shown in one color on map DC, and the acreage shown in the other color shows the proven acreage as we were accustomed to determine in 1919. After establishing the block of proven acreage I determined the number of acres in each one of the leases. This is shown by this tabulation marked Respondent's Exhibit DE which I have made. The total proven acreage shown by this tabulation is 2567.8 acres. From the proven acreage I deducted forty-eight acres for the six wells already drilled, leaving a total of 2519.8 acres, which in my calculation I have counted as 2520 acres. I next found from Exhibit 30 that the six Tex-Penn Duke-Knoles wells to August 1, 1919, had produced 421,140.23 barrels, and the Duke No. 1 of the Magnolia had produced 88,542.26, or that the group of seven wells had produced a total of 509,688.52 barrels. The tabulation is shown on four sheets, together marked Respondent's Exhibit DF (see

Volume of Exhibits). The tabulation shows that since the total production of the seven wells was 509,688.52 barrels, the average of each was 72,812.64 barrels. For the sake of computation, I have taken an area of ten acres as being drained by this production and for the next computation have taken an area of eight acres. It is very probable in the short time which these wells have produced that they would not have drained ten acres, but the best assumption we could make—we have made that assumption, which I think is rather liberal. If ten acres per well had produced 72,812.64 barrels, each acre would produce 7281.26 barrels, and the 2520 proven acres, as shown by the heavy green shading on Exhibit DC, would produce 2520 times what one acre would produce, or 18,348,775 barrels. At $2.25 per barrel, this would give $41,284,743 as the gross returns from this block of leases. That amount less one-eighth royalty gives $36,124.150, which is the gross amount the operator would have for his use.

The operating cost is placed at 25 cents per barrel. At the rate of 25 cents per barrel, the 18,348,775 barrels would cost to produce $4,587,193. We have accepted here a cost of $37,500 per well. By proper spacing, we believe 125 wells would protect the boundary and develop the property within a reasonable time. So we have taken 125 wells to be drilled at $37,500 each. The cost of drilling, therefore, would be $4,687,500. The cost of drilling and operation together, $9,274,693.

The gross amount for the operator's use, namely, $36,124,150, less the total operating and drilling costs, namely, $9,274,693, equals a net return of $26,849,457 on the basis that ten acres drains a well, as is shown by the preceding drilling. In the oil business there are many hazards, various conditions to be met, and it seems to me an operator would not be justified in paying for property all that he could get from it. He should expect over $26,000,000, but I think the market price, the fair market price, would be

much less than that. Therefore I have fixed his market price on this computation at one-half of what he could expect as a return, namely, $13,424,728.

Exhibit DF also shows a computation on the basis that it was customary to drill one well to approximately eight acres. Following through the computation in the same manner as used on the ten-acre basis, the net expected return would be $34,733,717, and reducing that to a price which I felt a buyer and seller should meet on, I reached a figure of $17,366,858. I have accepted the ten-acre basis in fixing the value and that is the one on which my valuation of $13,000,000 is based.

In order to test the valuation, I first made a comparison with Ranger.

*Mr. Fullerton.*

Q. We will present the data regarding Ranger first. A. Exhibit 69, by Mr. Oliver, shows 241 wells producing 13,167,495 barrels, or an average of 54,636 barrels per well. Now, there are eight acres per well. Each acre would produce 6,829 barrels. If there were 6,829 barrels and 2,520 producing acres, we would expect 17,209,080 barrels from the proven area of the Tex-Penn block. 17,640,080 barrels were sold at $2.25 per barrel—let me correct that figure. 17,209,080 barrels were sold at $2.25 per barrel. There would be derived $38,720,430. That amount less the one-eighth royalty leaves $33,880,376. If 125 wells are required at $37,500, the cost of drilling would be $4,687,500. If the 17,209,080 barrels were produced at 25 cents per barrel, the cost of operation would be $4,302,270. The cost of drilling and operation together would be $8,989,770. The gross amount available for operators' purposes, namely, $33,880,376, less the total of the operating and drilling costs, $8,989,770, leaves $24,890,606, which is the amount the operator should expect to receive by comparing the Tex-Penn group of leases with Ranger, as

shown by Exhibit 69. By reducing that because of hazards, and so forth, leaves an amount of $12,445,303.

Mr. Davis: Have you got those computations on paper?

Mr. Fullerton: We will give them to you in a few moments.

Q. You were asked to assume in the hypothetical question that on July 16, 1919, the 241 wells mentioned in Petitioner's Exhibit 69 were still producing at the rate of 74,604 barrels of oil daily? A. Yes, sir.

Q. Now, in the light of that daily production at the end of the period for which you have data, did you consider the computation that you have made concerning the Ranger Field, about which you have just testified, to be liberal or conservative? A. Well, the production which has already been derived does not represent nearly all of the oil which may be expected, but I have used only what has already been sold.

Q. Do I understand that you took no account of the future production in making those particular figures? A. That is right. These figures are based on what has actually been produced, not what might be expected.

*By Member Van Fossan.*

Q. I notice that you are using eight acres in the Ranger computation. A. Yes, sir.

Q. Whereas you used ten acres as your final base in the Desdemona computation? A. Yes, sir.

Q. Was there any special reason for that? A. Nothing; only that I have made both computations in the Ranger and accepted the most conservative one. That is all. We found the average in Ranger or we knew that the average in Ranger was eight acres; therefore we had actual facts that I knew of.

Mr. Davis: If the Court please, unless in some other way it can be connected up, I move to strike out the testimony about the Ranger Field. It does not test the accuracy, the validity or the competency of his calculation in this field to say that he takes another set of figures composed of 241 wells on one side and so many barrels on the other, and by applying his particular formula gets such and such a mathematical result. That does not prove it any more than if you take any other set of arbitrary figures and show that by process of addition, subtraction and division, would give such and such a result.

The Presiding Member: The motion is denied.

Mr. Davis: Exception.

The Presiding Member: Note the exception.

I went through the same computation as the basis of Petitioner's Exhibit 72. That gives the production per acre of 7346 barrels. When I used Petitioner's Exhibit 69, I arrived at 6829 barrels per acre. I have used the smaller figure for making the comparison.

I also made some comparison based on the Glenn Pool and the Cushing, Oklahoma. The Glenn Pool had produced since 1907, and we had almost a complete history. Cushing came in in 1913 and had gone far enough that we had a reliable history. Many oil men in fixing their prices refer to Cushing and Glenn Pools. They were both termed hard-rock country, similar to the Ranger Field. The formations were comparatively hard and a churn drill (cable tools) was required for the drilling.

This same method was used at Ranger because these formations were geologically approximately the same, the same type, and it required that method of drilling. So that it was the general practice to compare Ranger, the Glenn Pool and Cushing in order to fix prices. It was

the general practice with the men I came in contact with to use information and knowledge gained at the Glenn Pool and Cushing to estimate and check production at Ranger. We did not use data from the Louisiana Field because that was softer material. It was a thicker sand, different character of sands, and it gave a big production per acre.

Q. Do you know the general practice in the oil industry when making estimates concerning the Ranger Field it is of earlier date?

Mr. Davis: Objected to as immaterial.

The Presiding Member: Overruled.

Mr. Davis: Exception.

The Presiding Member: Note the exception.

A. We talked of Ranger being like Glenn Pool and Cushing. We expected production to run parallel to the history of Cushing and Glenn Pool, as we had known them.

*By Mr. Fullerton.*

Q. Now, up to August 1, 1919, had that expectation been carried out in so far as Ranger was concerned? A. I think so. These wells that are shown here give a production of 6,829 barrels and were still producing; Glenn Pool was 7,000 barrels, 7,000 to 7,500, I think the Government statistics showed it, and Cushing 7,475. So these are closely comparable with them.

Q. Well, now, in regard to Ranger and Desdemona, what was the general practice in the industry in 1919 concerning estimates made in the Desdemona Pool? A. They expected similar results. The geological formations were identical; both fields were on or near the crest of the major anticline, namely, the bend arch, and both of them had structures that might be comparable. So that we had a character of oil, the general geology that was comparable.

the local geology was comparable, the formations were comparable, and the only difference was the bend arch gets deeper as it goes to the north, as shown by Mr. Donoghue's exhibit, which is labelled a cross-section, * * *.

Member Van Fossan: You are referring to what exhibit?

The Witness: Exhibit 76.

Q. You have stated that you tested the results of that computation of the value of 13,000,000 that you have placed on the Tex-Penn Duke-Knoles acreage by comparison with the Glenn Pool and Cushing? A. Yes, sir.

Q. Tell us the results of the test you made.

Mr. Davis: Objected to. It is not shown they are comparable.

The Presiding Member: Overruled.

Mr. Davis: Exception.

The Presiding Member: Note the exception.

The Witness: Comparing this with Glenn Pool, I would make the following comparison or reasoning: We would expect to receive from the Tex-Penn block in dollars $25,631,250, or reduced as I have made the other reductions, giving a figure of half the expected returns, which would be $12,000,000 in dollars—$12,815,625.

Now, making a similar comparison, as you have asked me, with Cushing, we would expect $27,687,918, which reduced one-half, as we made the other reduction, would be in dollars $13,843,959.

Mr. Davis: I move to strike out the answer.

The Presiding Member: Motion denied.

Mr. Davis: Exception.

The Presiding Member: Note the exception.

*By Mr. Fullerton.*

Q. You say that you took one-half of the expected return as your figure. Now, what does that indicate to you? In other words, what is the one-half of the expected return which you take? A. Well, in the oil business there is a considerable hazard. It is a speculative business, and we frequently do not get what we expect, and, therefore, some reduction should be made. We also do not get it just when we expect to get it. The question of time enters into it, or interest, and factors of that kind I have taken into consideration, which has caused me to fix the market value at one-half what our really expected return would be.

Q. Then your expected return, as I have understood your evidence, after subtracting for the royalty and all the drilling operation and production expense, is what? A. Expected net return.

Q. Then do I understand that when you mentioned half of the expected return you mean the fair market value of the property? A. The 13,000,000 I have fixed is—yes, it is fair market value. That is, through that process I reach the fair market value. All of these figures strike right around 13,000,000; one or two just a little below, but most of them above.

At this point the witness was instructed to strike from his tabulations any reference to Petitioner's Exhibit 72, and the witness struck out such references, using red pencil.

There was received in evidence, without objection, the following exhibits:

Respondent's Exhibit DA, sub-structure map prepared by the witness (see p. 1480, *ante*).

Respondent's Exhibit DB, map prepared by the witness showing the location and classification of the completed wells (see folder of Unprinted Exhibits).

Respondent's Exhibit DC, map prepared by the witness to show the proven acreage as this witness found it (see folder of Unprinted Exhibits).

Respondent's Exhibit DE, which is a tabulation of acreage corresponding to the dark green area on the map DB (see folder of Unprinted Exhibits).

Respondent's Exhibit DF, which is a computation by this witness from the seven wells on the Duke-Knoles leases (see Volume of Exhibits).

In arriving at the fair market value of $13,000,000, I did not take into the computation any value for the gas produced, although it had considerable value both for fuel in drilling operations and for use in making gasoline.

I also gave consideration in arriving at my value to initial production of the wells, although prior to this litigation I never used that method of valuing property for the reason that initial production represents guesses. It was not measured production. The relationship between initial production and ultimate production is not uniform. Sometimes a well with a large initial production will give a small ultimate production, and in other wells the initial production seems to continue uniform day after day. The difference is caused by geological conditions, each well having its own characteristics. From my experience I do not think that the ultimate production can be reliably estimated from the initial production.

*Cross-examination.*

Q. Is this not true, that after all the prediction of a geologist—and I am speaking now of petroleum geologists—the prediction of a petroleum geologist is at best an informed guess? A. I think it is much more than that. I think a guess should strike success at somewhere around 50 per cent. That is, taking the good guesses ultimately would equal bad guesses and, I think, if you choose to call

it guesses—I think they are estimates because they are based upon facts—I think I have struck considerably more than 50 per cent.

Q. What do you think your batting average is? A. I would like to think it was 75 or 80 per cent., as near as I can figure from what I have done.

I think I am an average geologist and I suspect that my experience would be the common experience of the profession.

Q. You think the petroleum geologist has reduced his study to a science which will produce accurate results in 75 per cent. of the instances to which it is applied? A. I think so. I might put that another way. We have had more oil than we could consume the last couple of years. We are charged with having been sufficiently successful to have developed too much.

Q. Do you think the petroleum geologist is the author of that misfortune? A. Partly. He is not the sole author.

Q. He pointed the way? A. Yes.

The contour lines on Respondent's Exhibit CZ are drawn at 500-foot intervals and relate to the relative position of the same formation. The first one shows a thousand feet above sea level, but I do not know what formation they relate to. There is not any such thing as the Bend Arch formation. There is a Bend Arch structure, but not a Bend Arch formation. I took the exhibit into consideration as showing the general relation of this structure. I cannot say from my own work that the contour lines are those of the Bend Arch formation. The map comes from a bulletin of the United States Geological Survey. I would have to check back to the text. The exhibit helps me to show that this area is along the crest of that structure where we might expect production. My Exhibit DA shows contour lines intended to indicate the top of the lime. I think it is called the Marble Falls. They indicate a structure which is based on a formation. This limestone ex-

tended north into the Ranger Field and still farther north. The source of information from which the contours are drawn is the sand cards of the wells. The wells used are shown in red figures on this map.

Q. Now, I notice that those contours of yours are in part complete black lines, and in part broken lines; what is the difference between the two? A. We feel that we have information enough over most of the area that our maps may represent the structure, but lacking the well to the southeast—no wells have been drilled to give us this configuration; so we have interpreted it from the data, whatever data we have as shown by the red figures.

Q. Wherever you have a broken line, we are to treat it as a conjecture, is that true? A. Yes, that is right, and all of the map is an interpretation——

Q. What do you mean by that? A. We have not a well at that point on this map; and, therefore, we have to draw an inference between the points where we have the information and where the information is lacking.

Q. Now, taking the so-called dome or closed circle where your pointer rests in—what is that, the H. T. & B. Survey? A. Yes, that is H. T. & B. Survey No. 4.

Q. What is the elevation of that?

* * * * * *

A. 1200 feet.

* * * * * *

Q. How do you close the contour that in the beginning you spoke of as 1200 feet? You have a complete circle there; what data have you to complete that circle? A. We have the well location, we have a well in the west—rather the southeast part of the J. Mahoney farm, on the H. T. & B. No. 4 Survey.

*By Member Van Fossan.*

Q. You mean the southeast or southwest? A. That would be southwest, yes, sir. We have two wells near the

center of H. T. & B. Survey No. 5; we have wells to the north on the Carruth Survey; and one well considerably to the east on the Millard Survey.

*By Mr. Davis.*

Q. Considerably to the east— A. That is my interpretation that——

Q. How far to the east is the last well you mentioned? A. It is 12,200.

Q. Three miles or two and one-half miles? A. A little over two miles.

Q. All right. Are those the wells from which you completed your first contour? A. Will you repeat that, please?

Q. Are those the wells from which you completed your first contour? A. Yes, sir.

Q. I can see how those particular wells would locate the contour drawn through them; but how do they locate the contour within the compass in which those wells do not lie? A. They don't locate the contour; they give me, I think, data enough from which to make that interpretation.

Q. Well, then, your contour, although closed, is conjecture, isn't it? A. All contours are interpretations, yes, sir.

Q. If you have enough wells, you can reach the contour with certainty, can't you? A. You never reach certainty, unless you have the wells—first, unless you have the formation all exposed, and those formations never would be exposed by the wells, and you must have the interpretation between.

The contours have the effect of showing a dome in the H. T. & B. Survey and I have tried to show that those domes are the most probably productive areas. Two wells have been drilled within the dome prior to August 1, 1919, one of them having an initial production of 15 barrels and the other an initial production of 45 barrels. One well belonged to the Tex-Penn Company and in June, 1919,

had no production. The other well belonged to the Sun Company, had a production in June of 886.56 barrels and in July, 1919, none.

Q. Do you think the history of those two wells was encouraging as to the area that is enclosed within your 1200-foot contour? A. One of them, I would say, was encouraging. The other had oil in it, and it could be taken to offer some encouragement, I think.

* * * * * *

Q. Well, the effect of those contours is to show, is it not, that these subsurface strata, in addition to the formation, in addition to what you call the structure, have individual idiosyncracies of their own—irregularities, rather than idiosyncracies? A. Yes, sir.

* * * * * *

*By Mr. Davis.*

Q. I will put the question again. I find on the map, CZ, the nearest contour given on that map in the area we have under discussion in Comanche County, is 2,000 feet contour, and your contours over the area nearest to this one run from 1200 feet down. I ask you to explain, if you can, or to harmonize those two facts, or those two maps. A. As nearly as I can interpret this map, from reading the text, since it came this morning—this is made on top of the Marble Falls, and the map DA is made from the formation that we call the black lime. I have been careful here to select any inference and interpretation of the black lime as shown by these cards, and there is a distinct horizon over the area in question. Whether that correlates with the Marble Falls or not, I am not certain. In fact, there would be quite a latitude of discussion. That map, therefore, the map CZ, is based on the Marble Falls; and map DA is based on the black lime, and there is no claim that they are the same.

Q. Is that black lime not one of the Marble Falls limestones? A. It may be and may not be. I am not placing myself as an authority on that. It would take the correlation of a large series of well records——

Q. What sort of rock is it in which oil is found in this Desdemonia oil field? A. The cards refer to some of it as lime and some as sandstone, or as sand, rather, not sandstone.

Q. Do you know, of your own knowledge, or of your own investigation, what it is? A. In the Desdemona Field?

Q. Yes. A. No, sir; I never have seen any samples that I am sure of. I have examined many cards at that time, but none that I could connect of my own memory, that I would dare to connect with this.

Q. What kind of rock is oil found in, in the Ranger Field? A. The cards report it to be in the limestone and in sand, the same character of material as here.

Q. What kind of rock is oil found in in the Glenn Pool and the Cushing Pool? A. It is in sand in both of those.

Q. Now, in the Glenn Pool and the Cushing Pool in Oklahoma, the sand is regular and persistent, is it not? A. Yes, sir.

Q. Of uniform thickness? A. Approximately so.

Q. And it is also of practically uniform porosity? A. There is a considerable variation in the porosity, Mr. Davis.

Q. It is a fact, is it not, that in porosity both of those pools are regular, and they are regular in productivity and durability of the wells? A. I think that is right, yes.

Q. It is true, isn't it, that the Glenn Pool came in in 1907? A. That is right.

Q. And was still producing in 1919? A. Still producing yet.

Q. And still producing now? A. Yes, sir.

Q. And the same thing is true of the Cushing Pool, is it not? A. Yes, although the Cushing Pool did not come in until 1913.

Q. It came in in 1913 and was producing in 1919 and is producing now? A. That is right; that is, not all of the wells, but the pool as a whole.

Q. The pool is still a producing pool, and the wells there have proved to be durable wells, haven't they? A. Yes, sir.

Q. Would you say that was true of the Ranger Field? A. Many of the wells in the Ranger Field have become exhausted.

Q. It is true, isn't it, that in the Ranger Field the sand rock, in which the oil was found, was of irregular thickness? A. Part of it was and part of it was not.

Q. And it is true, isn't it, that there was irregular porosity? A. Yes.

Q. And it is true, isn't it, that the wells there show a disposition to decline very rapidly? A. Are you speaking now of all of them?

Q. Of the Ranger Field. A. Yes, sir.

Q. All of the time? A. Yes, sir; I think I have information enough that I can say that. I have known some of the wells declined; and so I think I can swear they did decline.

Q. And that was a field characterized by rapid exhaustion? A. Yes, that is right.

Q. Let's come to Desdemona— A. If you consider clear to the ultimate of it.

Q. Let's come to the Desdemona Field. Oil was found in the Desdemona Field either in sand or sandy limestone, wasn't it? A. I think some of it was found in porous lime, too, without the sand.

Q. And it is true, isn't it, that the strata in the Desdemona Field were characterized by sand lenses formation encased within the limestone? A. There is some dispute about that.

Q. What is your own belief about it—first, your own knowledge? If you have some knowledge, what is your own knowledge or belief? A. My own belief is that there is considerable variance there.

Q. The specific question that I put to you is whether or not the formation in the Desdemona Field was not a formation of lenticular deposit of sand, a mixture of sand and lime, encased in the limestone formation, itself. A. I have given considerable attention to that, and I have a notion that that is right, but——

Q. That is enough.

Mr. Fullerton: Let him answer; let him finish.

Mr. Davis: All right, let him finish. Go ahead.

A. But to find any absolute testimony or proof, I should have to go over those cards and work them over, but I have a notion that is right.

*By Mr. Davis.*

Q. Of course, that is a characteristic of such lenticular formations, that the lenses may be of uneven thickness, and thin out towards the edges, and thicker toward the center? A. That is the definition of lenses, I think, but it is also true—but that is not exactly what lenses mean in geology.

Q. All right, give me the geological definition of lenses. A. It is a formation that alternately become thicker and thinner, that may not pinch out entirely. We speak of that as lenticular formation.

Q. It is also true, isn't it, that it is a characteristic of the lenticular formation in general, in these Desdemona leases in particular, that the rock is of varying degrees of porosity? A. That is right, yes, sir.

Q. And it is also true, is it not, that the rapidity with which oil may be recovered, the amount of oil that can ultimately be recovered, depends largely, if not principally, on the porosity of the rock in which it is found? A. Porosity is only one factor.

Q. Well, what is a factor? Is it one factor? A. It is one factor.

Q. I suppose another factor is the thickness of the strata itself. A. That is another, yes.

Q. Now, is there any one factor which is more decisive of the rapidity with which oil can be obtained from a well, or the amount of oil which can ultimately be extracted, than the porosity of the rock itself? A. Porosity is only one of the factors. If you had porosity alone, without the other factors, that would have no influence. It is the operation of the whole thing, the whole thing together, that discharges the oil.

Q. Porosity comes down, in familiar language—porosity comes down, in familiar language, to this: That you can't get blood out of a turnip, and if it is a hard turnip, you are not going to be able to squeeze any oil out of it? A. I would say primarily the question is whether you had any blood in the turnip or not.

Q. Of course the porosity determines, too, the number of interstices in the rock in which the oil may be collected. A. The number and size.

Q. It is like a sponge, and the amount of water it will hold depends upon the texture of the sponge? A. Yes, upon the relative connections, and many features like that.

Q. And it is true, again, that the porosity in the Desdemona Field was a very variable quantity, was it not? A. Well, I don't know whether I would say "very"; it was a variable quantity, yes.

Q. More variable than in the Cushing and Glenn Pools? A. Yes.

Q. More variable, indeed, than in the Ranger Field? A. I would not say that.

Q. Just in passing, you spoke about the utility of these gas wells. I suppose that the rapidity with which the oil comes up depends somewhat on the gas pressure, if any, behind it? A. That is one of the factors, yes, sir, a very important factor.

Q. Now, you spoke of the fact that these gas wells had a utility for repressuring oil. A. Well, I don't understand that I put it that way, that the gas wells did. I meant to say, at any rate, that the gas from the wells could be used for it. It is the gas that has the utility, not the wells.

Q. As a matter of fact, the repressuring of oil wells is largely practiced to-day, isn't it? A. Well, it was also practiced in 1919. I think Mr. Smith had applied it in the Marietta Field, in Ohio. It was not generally practiced throughout the Mid-Continent area.

Q. As a matter of fact, that practice is something of comparatively recent growth, isn't it? A. The application of it is, yes, but not the knowledge that it could be practiced. The application is, yes.

Q. And was a practice in the exhausted oil field at Marietta, Ohio? A. It was not exhausted, it declined. When it was exhausted, there was no use in any of these methods.

Q. Of course, I suppose exhaustion is, like porosity and these other words, a relative term? A. No, sir; exhaustion is an absolute term.

Q. All right, I will accept it as such. A. When it is exhausted, it is all gone.

Q. Now, your understanding of valuation, as I understood you, contemplates that the value to be put upon oil and gas leases, or a block of leases, is dependent upon the amount of oil that the owner can expect to recover? A. Yes, sir.

Q. That is the whole theory that underlies your valuation, isn't it? A. I wouldn't say the whole theory, but that is the primary factor.

Q. Do you think there can be any such thing as fair market value, that does not take that factor into consideration? A. No; I think that it must be——

Q. You would not, for a moment, would you, countenance a valuation of an oil and gas lease simply on the

basis of the price which can be paid at a time of excitement in the same territory? A. No, sir, I would not.

Q. You certainly would not advise any client of yours to buy on that basis, would you? A. No, sir.

Q. It is true, isn't it, that in any oil field, especially in a new oil field, and after a new discovery, that the new discovery creates excitement and enhances the prices that are being paid in that locality. A. I think we can safely say it creates excitement; and I can't subscribe wholly to the last part of the question, because often a well is located in the middle of a block where no leases could be acquired and the company owning them would probably not sell them. That would not enhance them in any way, but when a wildcat is located, as soon as the location is made, the leases are considered more valuable. Then, if the well looks as though it is running into a high structure, that again enhances it. Then, if the well comes in in a favorable amount, that enhances it, and the development on it, or the royalties are enhanced in value.

Q. Conversely, I suppose it would be true that if the well was a failure, the excitement would be correspondingly low? A. Yes.

Q. But that you don't accept as a basis for determining the fair market value of the property? A. No, I would not base it on that.

I have attempted to interpret what might be expected from the leases on August 1st from the data we had in hand. By "proven acreage" I mean acreage from which one could reasonably expect to obtain oil. The more uniform the formation the larger area the well will prove.

Q. If the formation is spotted and irregular, the smaller the area the well will prove? Is that true? A. Well, Mr. Davis, you are using a formation that the geologists have not defined, a spotted formation. What do you mean by that, Mr. Davis, sir?

Q. We have heard so much of that word in the trial of this case, I assumed that it was a word of general acceptation. Do you know, yourself, what is meant by saying that a field is spotted? A. When we speak of a field as spotty, we mean that at one place there would be a group of wells, and then with a dry area between, and then another group of wells, and possibly beyond that some more, and off in another direction there is another well, and then another dry area, and the size of the productive area varies.

Q. That is exactly the use I intended to make of it, of the term spotted. The first well does not prove as much of the area as in a field that is not spotted, does it? A. That is right.

Q. What about the Desdemona Field, was it a spotted field? A. Looking at it from the standpoint of August 1, 1919, I don't think we could classify it as such; because to be spotted field, we must determine the limits of the productive spots and the limits of the dry spots, and the dry spots in the east part of the Moss Survey was pretty well limited, limited on the west, at any rate, but not surely on the east; and none of these spots had sufficient wells around them to say that the field was spotted at that time.

Q. What did subsequent experience prove about it? A. Mr. Davis, I have not studied the history of this field after August 1; that is the date I was asked to compile the data on.

Q. You have not undertaken to affirm or disaffirm your conclusions by subsequent events? A. I have peeked into subsequent events, but not attempted to analyze them.

Q. Didn't your peek into subsequent events convince you that Desdemona was a very spotted field? A. I would not say that I reached a point of conviction on it.

Q. Did you reach the point of suspicion on it? A. Well, I don't know whether I would suspect it was—I would suspect it was, yes.

Q. Do you think a dry hole condemns a territory halfway to the nearest producer? A. No, sir; that is not what I attempted to say.

Q. What did you say about it? A. I said the best measure of the area condemned by a dry hole was a point midway between a producer and a dry hole.

Q. What is the difference between that statement and the one I just made. A. Because many dry holes have producing wells offsetting them, just a few hundred feet away. The angle is different, that when it condemns it, there is something to prove that it is not productive. Now, we are left here without anything to show what the limit is; and because we don't know, we take a reasonable view of it and strike that line.

If you were to draw a straight line across Exhibit DB east and west along the top of the Mary Lewis lease there would be no dry holes north of the line, there would be eleven wells from 10 to 99 barrels south of the line and fourteen wells north of the line. Of the largest wells shown in blue there is one south and fourteen north. Of the next largest wells shown in green there are none south and five north. The fact that the preponderance of dry holes lies south of this line and a preponderance of large wells north of it does not indicate any difference in the prospective oil output and the value between the territory south and the territory north of that line. It indicates to me that there was more development to the north. I would make the estimate that nobody could get in the south to develop as they did up north, and I think that is the main reason.

I have assumed that the average production of the wells which have been drilled on the Tex-Penn and on the Magnolia-Duke lease prior to August 1st, would represent the average production of other wells which would be drilled over the proven area colored in green on Exhibit DC.

Q. And it is true, is it not, that your entire valuation is predicated on that hypothesis? A. Plus the fact that there were producing wells to the south of the area, there were producing wells to the west, and large producing wells to the north. The picture is not complete with just that small group of wells.

Q. You did not take into the average the wells to the south or the wells to the north, or the wells to the west, did you? A. No, sir.

Q. If you did not take them into consideration, how can they support your average? A. The fact that here (indicating) was a large area, over which there was production, and nearly all of the wells which had been drilled were producing wells.

Q. As a matter of fact, now, the wells to the south line of the Tex-Penn leases did not support your average at all, did they? A. They indicated that there was oil to the south of the block of leases.

Q. Did they indicate the average production, such as you have attributed to the hypothetical wells on the Tex-Penn leases? A. I have not averaged the production of any of the wells to the south. I suppose, from what I can see, that they would not.

Q. And the wells to the west of the Tex-Penn leases—did they show any such average as you attribute to the prospective wells on the Tex-Penn leases? A. I think not.

There were thirteen wells drilled on the Tex-Penn prior to August 1, 1919. I took into my average six of these wells and one on the Magnolia lease. I took the aggregate production of these seven wells to August 1st and divided it by seven to ascertain the average without regard to the age of the wells. If one of those wells had come into production in September, 1918, and the remainder had come in the last week of July, 1919, I could not have used the same system to ascertain the average. I have the June production for each of the wells.

Q. Did you observe, when you examined Exhibit No. 77, which you testified you had before you for consideration, * * * the total initial production was 7,365 barrels per day; and that the total production in July, 1919, was 1,064 barrels per day? I ask you if you observed that fact? A. I did not observe it, but I observed the aggregate initial. I observed the individual initials. I wish to emphasize, in using the word "observed," I am selecting that word carefully.

Q. That is all I am asking you for. A. Because I did observe it. I did not compute the initials of them, because I felt the initials mean so little in the ultimate.

Q. Well, I am asking you now if, after having observed that fact, you attributed to it any importance as indicating the characteristic decline of the wells in the Desdemona Field? A. I can't—I think I did not give it any particular importance, because I felt I was starting on the wrong basis all of the time, giving other factors——

Q. You did not think that that indicated that the wells in the Desdemona Field in general, and in the Tex-Penn leases in particular, would be of a rapidly declining character? A. Well, on practically all wells they are declining wells.

Q. Of course. A. And the question then to be considered is, whether they were rapidly declining.

Q. That is the way I put the question. A. And that depends on over what period—one of them was rapidly declining at the end, or during July. I think the others could not be classed quite as rapidly declining; they were suspiciously declining.

Q. They were suspiciously declining? A. Yes.

Q. Were those the newer wells that were suspiciously declining? A. Not so much—may I get one or two exhibits that will have that in front of me?

Q. That is Exhibit No. 63, I think you will find it on. A. One of the wells was giving more in July than in

June, that is Knoles 2. Knoles 3, I think, was not unusually declining. Duke 2 was holding almost level. Duke 3 was declining, but not enough to frighten anyone. Duke 1 was—well, it had not declined a great deal since April.

Q. It was finished, wasn't it, as a well? A. A producing well, yes. It was producing 6 barrels a day——

Q. In July, wasn't it? A. I can't say it was finished, but no production was reported. I would not say that. I have no record of where they had abandoned the well.

Q. Well, Exhibit No. 63, Petitioner's Exhibit No. 63 shows, does it not, that it was producing 6 barrels a day? A. What was this exhibit?

Q. Exhibit No. 63. A. Now, what was your question?

Q. I am asking you whether Petitioner's Exhibit No. 63 does not show that it was producing 6 barrels a day? A. I worked this over, but I don't recall just exactly—perhaps we could facilitate this if you could point it out.

Q. The first one on the list. A. At the top?

Q. Right at the top, the discovery well. The figures you have presented here show 6 barrels, but I don't think that I would subscribe to that. Those are not the pipe line runs, and I am basing my estimate on the pipe line runs.

Q. Well, you did not—this is what we are coming to with this particular inquiry: You did not, in fixing your prospective average for the future years, take into account the declining characteristic of these wells, as shown by the exhibits in evidence? A. Yes, sir, I did.

Q. Did you? A. Yes, sir.

Q. You did not take into account, did you, the length of time that the individual wells, which went to make up your average, had contributed to the total on which the average was built? A. Yes; because there were some of them that had not finished yet, that were still producing, but I had to accept—in order to fix the average, I had to accept the production as far as they had gone. I took it into account——

Q. I am taking, now, your computation, and wish to follow you through it, item by item, and fact by fact, and ascertain, if I can, the hypothesis on which this computation, which is the basis of your valuation, is built; and your first hypotheses is, is it not, that the seven wells all contributed equally one-seventh of the aggregate production of all of them, up to August 1, 1919? A. No, sir, it is not.

Q. You did not make that hypothesis? A. No, sir.

Q. What did you mean, then, by taking the average production of the wells as 72,812.64 barrels? A. The average production of a group of wells does not mean that every well would contribute equally to that average. It means that, if we have this group of wells, that the average—if we had a well which represented the average, that well would do a fractional part of it. That does not mean that these wells, or each well acted that way. The fact is, that no one well did act that way.

Q. Do you think such an average can fairly be adduced from wells which not only differ in size but differ in age? A. Mr. Davis, I just don't quite catch what your question means.

Q. You are trying, are you not, in valuing this property— A. Yes, sir.

Q. To ascertain what its probable future oil production will be? A. Yes, sir.

Q. And you agree that is the only sound method for valuation of oil and gas leases, do you not? A. That is the best method, yes, sir.

Q. And in order to do that, you are trying to discern what the average production may be expected from the wells that are to be drilled is? A. Yes, sir.

Q. And that average production, you are deducing from the total output of the six wells— A. Seven wells——

Q. Up to the 1st day of August, 1919? A. Seven wells.

Q. Seven wells. Excuse me. Seven wells? A. Yes, sir.

Q. And you are assuming that the total production, divided by the number of wells, will give you what may be reasonably expected of the future wells to be drilled on this block of leases? A. Yes, sir.

*By Mr. Davis.*

Q. Now, I asked you if that average is a reasonable guide for the future where it is composed of wells differing not only in size but differing in age. A. I think it is where they are on the same property.

I do not think it would do to average together a well that had been in one day with others one month old and still others six months or a year old. It would not have been proper to take into the average the large wells to the north of the Tex-Penn property. They had come into production the latter part of July and all we had was flush production for a short period, although I admit that of the seven wells which I did use to ascertain the average, six of them came in after the 1st day of June, 1919. My first assumption is that we could expect from the average well to be drilled on the Tex-Penn leases an average production of 72,812.64 barrels per well. I used seven wells to ascertain the average. I would not have been so content if there had been only six wells or five wells. I expected the average well to produce the amount of oil in a reasonable time, perhaps the major part in the first two years, but they would continue to produce a minor amount for a long while. The prospective average production of each well is perhaps the most important factor in the valuation. It is like a link in a chain—if you take a link out you have nothing left.

Q. Your next assumption is, is it not, that there will be one well down on every ten acres? A. No. My next assumption is that these wells will represent the average drainage which has occurred from ten acres.

Q. Well, what deduction does that lead you to as to the wells which were to be drilled in the future? A. I do not see that it is necessarily any deduction, only that each acre of the proven area will do likewise. These wells have done a certain thing. My deduction is that the rest of them will do likewise.

In ascertaining the number of wells to be drilled we have calculated something like forty as offset wells. The remainder of the 125 would be distributed over the area in such a way as to get the maximum amount of oil per well with a minimum amount of cost. That would average one well to twenty acres. That does not mean that each twenty-acre tract would have a well. Where a large well came in it would require closer drilling, but the average would be one well to twenty acres. I do not plan to put one well to each ten acres.

I assume that the average acre in the so-called proven territory of the Tex-Penn would produce 7,281.26 barrels. I do not think we can pick out any particular acre and apply this average to it and compare it with any other particular acre. That is not the intention. To the north of the Tex-Penn leases there were large wells, which makes the northern part look better than the average. Slightly to the west there are a group of six wells. To the south we have one well which produced 22 barrels in two hours, although the record shows that it produced only 648 barrels during the year 1919. There might have been a lot of reasons why this well did not make more than 648 barrels in 1919.

Q. Have you made in your mind any effort to ascertain or to compute how much more per acre the northern section of that block may be expected to produce than the southern section of it? A. No, sir; I have not. There is not data for it.

Q. Then you have made, have you not, a pure assumption to the effect that the average production per acre of

the so-called proven territory will be 7,281.26 barrels? A. I have made an assumption based on the facts that I had before me.

Q. All right. Now, having assumed that average per acre, you then proceeded to multiply it by your 2520 proven acres, socalled? A. Yes, sir.

Q. Which gives you a total of 18,348,745 barrels? A. Yes, sir; that is right.

Q. That is pure mathematics and nothing else, is it not? A. The multiplication is.

Q. Is pure multiplication? A. Yes, sir.

Q. The underlying assumption is each one of those acres will produce that much oil? A. No, sir. The average acre will produce that.

Q. All right, I will accept that correction. The underlying assumption is that the average acre will produce that much oil? A. That is right.

Q. You made the next assumption that the price per barrel was $2.25? A. I think that is stipulated.

Q. That is agreed to. On the 1st day of August, 1919, the price of oil was $2.25? A. Yes, sir.

Q. You assumed, did you not, for the purpose of fixing what one could afford to pay for this property and what he might hope to get out of it that that price would continue? A. Yes, sir.

Q. Of course, if that price did not continue, if it went up or if it went down, it would disturb your calculations that much? A. It means this, that we have this price, and we are appraising the property at this time. We have found in the oil business there are ups and downs. Nobody can anticipate what the next down will be or what the next up will be and how much. It is the custom to appraise on the basis of the price at the time the appraisal is made.

Q. Of course. A. It is assumed that that represents the average.

Q. In that factor there is an assumption that that will be the average price of oil over the period necessary to recover what you have estimated as the petroleum content of the property? A. Yes, sir; that they will not get a better or worse price.

Q. Now, you deduce from that by mathematics the fact that on the 1st day of August, 1919, there was a total value of petroleum underlying this property of $41,284,743, is that so? A. That assumption means that that oil under the ground is not worth that much, if that is what you mean by your question. If you mean that I am assuming that there is $41,000,000—that is, the oil as it lay underground is worth that much, that is not the assumption.

Q. No, because you afterwards take off your costs? A. Yes, sir.

Q. But you do assume that the oil there under the ground will ultimately be sold for that figure? A. Yes, sir.

Q. Then, within what time do you assume it would be sold for that figure? A. Within a reasonable time. I assumed this lease would go ahead and be developed, and we know from the history of wells already that wells decline and these have declined, as well as going up in some instances, so that I have assumed within a reasonable time, a couple of years or so.

Q. Do you accept a couple of years as the time within— A. You get the most of it; not all of it.

Q. Do you think there was on the 1st of August, 1919, a reasonable certainty—"certainty" is the word I am using—a reasonable certainty that oil from that property would be sold to the amount of $41,284,743 within two years? A. Mr. Davis, I do not know that there is a reasonable certainty in the oil business. It is a hazardous business fundamentally, and to say that there is a certainty in it is putting a phase on the oil business with which I am not familiar.

Q. You would not accept that as applicable to this figure, would you? A. I would say there is a reasonable expectation, but I would not say there is a reasonable certainty.

Q. You would not accept that? A. I would not accept your statement. I would accept this as I put it here.

Q. I did not ask you to accept my statement. I am asking you whether you would adopt my word to describe it. A. I would prefer to use my own.

Q. Well, you decline to adopt the words "reasonable certainty" with reference to this figure, do you not? A. Yes, sir; I think so. I think reasonable expectation is what we ought to get out of that.

Q. All right. Now, you say after you have deducted from this figure, this expectation, 25 cents a barrel to cover the cost of production and $37,500 to cover the drilling cost, you have left a figure of $26,849,157? A. Yes, sir.

Q. That represents the value of the oil underground according to your computation, does it not? A. That is right; provided that oil would be brought to the surface within a reasonable time.

Q. Well, there would be these assumptions, first, the assumption that the oil was there; second, that it would be produced within a reasonable time, and, third, that the price when you got it to the surface would remain constant at the figure as of August 1, is that so? A. We are assuming, and it is rather definitely indicated, the oil is there. I think I can subscribe to the rest of your question.

Q. Well, now, having ascertained that is the value of the oil, you suggest that its fair market value is one-half of that sum? A. The fair market value of the Tex-Penn leases is one-half that sum.

Q. Of course, they have no value, as you will agree, outside of their oil content, have they? A. I think not, not as I viewed them, anyway. I am viewing them from a materialistic side; yes, sir.

*Q.* Now, you say that you cut the figure which your computation thus far has brought in two? A. Yes, sir.

*Q.* And settle down on a valuation of $13,434,728? A. Yes, sir.

*Q.* Now I ask why did you cut it in two? A. The expectation would give us over $26,000,000. This is a hazardous business. There is a hazard in the business. There is a question of deferred payment. The question in the change in the price of oil which might come up it might be of benefit and in order to make the hazard as safe as possible I am accustomed to cut the expectations greatly, because there are unknown factors, and for that reason I have been accustomed to place a value of approximately that is, the market value at approximately half what my mathematics would indicate. This is not a question of my own personal feelings. That is eliminated from any engineer's calculations. It is just a lump amount to account for the various elements in the hazards.

*Q.* This is intended, is it, to give the producer a chance for a 100 per cent. profit? A. Well, he has a chance for a 100 per cent. profit. There is a chance for much more than that, because these wells may come in much bigger than I anticipate. He has a chance for considerably more than that, but he has a reasonable expectation of that.

*Q.* Do you think a man is justified in engaging in the hazards of the oil business on as narrow a margin as 6 per cent. interest plus 12 per cent. or more, or a total of 18 per cent. a year? A. He is not justified in going into the production end of the business on that margin.

*Q.* He would not be justified in buying leases with the prospect of only that much profit, would he? A. I would not recommend it; no, sir. That would be my attitude.

*Q.* Is there any reason why you cut it in two or took 50 per cent. of that total rather than forty or sixty? A.

There is nothing, only the way I have commonly viewed it in order to reach a fair position and be safe. These are future factors. I do not feel that I could place any definite comparison on them.

Q. If you cannot— A. I know the business is hazardous.

Q. If you cannot fix a definite percentage on future factors, it is true, is it not, your reduction of this $26,000,000 to $13,000,000 is an arbitrary exercise of your opinion about it? A. It is an arbitrary exercise of my opinion, based upon judgment and experience.

Q. There is no reasonable certainty, is there, that you are right in adopting 50 per cent. rather than 40 or 60 per cent. as the basis of deduction, is there? A. I cannot subscribe to the word "certainty," Mr. Davis, in the oil business. There is a reasonable expectation, but I would not use the word "certainty." I think there is a reasonable expectation.

Q. You do not want us to assume from your testimony you have attempted to fix the fair market value of this property as ascertainable with reasonable certainty, do you? A. Well, I would come pretty close to that, but I do not know just why you use the word "certainty" rather than "expectation."

Using the computation predicated on eight acres being allowed for each well rather than ten acres would increase the value of the property approximately $4,000,000 or 30 per cent. more than when ten acres is allocated to each well. There is no reason, on the basis of facts in the testimony, to show that one hypothesis is more nearly correct than the other. I think it is a matter of judgment there. I accept the lower because I like to be careful in my estimates. I accept the lower figure as a matter of judgment and comparison of other fields. I have selected ten acres rather than eight acres as the acreage allocated to each well from the matter of my experience and a study of the well records showing the acreage that it was customary to have for the location of the wells.

Assuming that one well is located on each eight acres, the central point must be 295.165 feet from the nearest points on each side of the boundary. In a ten-acre parcel the distance is 330 feet. The Desdemona Field had not been developed far enough to determine whether a well would only drain 295 feet or 330 feet. Our knowledge on drainage would make us feel it had not time to drain more than ten acres.

In determining the worth of a well it would not be of any special value for me to have an accurate gauge of the well for its first twenty-four hours of production. If I had an accurate gauge of the well for the first twenty-four hours and an accurate gauge of the well thirty days later, I do not think a comparison between those two would give me any facts of value in estimating the life of the well. I have been accustomed in my appraisal work to feel that I was not especially safe until I had the history of the well for about two years. Then you can, I think, get a pretty fair estimate of the rest of its time.

Q. Nothing less than two years would satisfy you about the life history of a well? A. No. I would not be especially confident unless the well had quit within that time.

Q. Suppose you had a well which had come in on an accurate gauge for the first twenty-four hours of 5800 barrels and six months later you had another gauge of that well and it was doing 600 barrels, what would you predicate as to the life of the well? A. That would depend on the conditions under which the gauge were made. Gauges are made——

Q. I am assuming that these are accurate gauges, what would that give you as to the probable life of that well? A. If I just simply had those two figures?

Q. Yes. A. The two figures would not give me much of anything.

Q. Suppose you had the gauge of a well which came in for the first twenty-four hours a thousand barrels and six

months later it was doing 6 barrels a day, would that give you any intimation as to the value of that well? A. I would want to know the conditions under which those gauges were taken, how the well had acted in the meantime, and so forth. A well might make 100 barrels one day and make nothing the next and shut right down.

Q. What might it do the third day under those conditions? A. It might go back again and it might not. Wells do just such things as that.

Q. Do you know of any well in the Desdemona Field that played that in and out cat and mouse game? A. Take the Knoles well.

Q. Which Knoles? A. Knoles 1 of the Tex-Penn.

Q. Yes. A. There is a place where the well as computed—that is, this you understand is a deduction, a dividing of the runs, the monthly runs by the daily figures or by the number of days in the month. Now, that does not give us necessarily what the well did, but we will assume that that represents it. The well started in at 114 barrels as shown by the——

Q. No, not Knoles No. 1. A. Well, that is what I have according to Exhibit 73. It is marked Knoles No. 1.

Q. Go ahead. A. Let me take Duke No. 1 of that group. That is just as good.

Q. Go ahead and make your statement. A. Let us take Duke No. 1.

Q. What exhibit? A. That is Exhibit 73.

Q. Yes. A. I have a photostat of it. I assume this is exactly a reproduction. There was a well that for the first month shows, November, 1918, 542; the next month, 318; then in January of 1919, 81; then up to 283; down to 162; down to 66; down to 21; up to 27.

Q. Yes. A. We have records of much more extreme variabilities than that.

Q. Do you know whether these are gauges or were pipeline runs? A. This says, "The data on Duke-Knoles wells

secured from Main & Company. On the Magnolia wells secured from Magnolia Petroleum Company." Since it was customary to report the monthly by pipe-line runs, and I assume they are pipe-line runs.

Q. When you first mentioned this well you spoke of Knoles No. 1, did you not? A. Yes, sir.

Q. You are now testifying about Duke No. 1? A. Yes. You seemed to have difficulty in finding Knoles No. 1. I can use that just the same.

Q. All right. Take Knoles No. 1. A. The first month, December, 1918, 114; January of 1919, 2,148.

Q. Do you know what had happened in the interim? A. I do not know that anything happened. All I am taking here are these gauges as indicative of what the well did.

Q. As a matter of fact, that well had been drilled deeper into the pay on the 28th of December? A. I do not see that it had, but we will assume that it had. Then——

Q. You would not treat that as a cat and mouse well if the production was increased because it was drilled farther into the pay? A. I do not say because they drilled it deeper it would prevent the well from doing what wells ordinarily do. That illustrates the same thing.

Q. That is the sort of thing you mean, is it, by the variability of wells? A. That is one of the things I mean. You asked me——

Q. Let us take the Knoles for one more question again. A. Yes, sir.

Q. In the face of this exhibit. A. Yes, sir.

Q. If in January it was doing 2,148 barrels a day and in July it was doing 448 barrels, would that be to you indicative as to the life of that well? A. All it would indicate is that the well had lived that long.

Q. I suppose that we could safely assume? A. Yes, sir.

Q. What about the future life of the well? A. That fact I do not think would indicate that the well was near its

termination. It might be and it might not be. There are so many conditions—the paraffining of wells temporarily, water intrusions——

Q. I will put it this way: Would that be a discouraging symptom to you? A. To a certain extent, yes, sir.

Q. If you found a number of sister wells that were going through the same performance of decline, would that increase the extent of your discouragement? A. I am answering that now from the history of our own experience with wells in Ranger and Breckenridge at that time. We found the wells going down. We were discouraged. We did not know whether that was a permanent decline or not. There were so many possibilities in oil well operations that we began to become suspicious. We had not reached a conclusion. We did not have data enough to reach the conclusion to point to a permanent decline.

Q. It did indicate uncertainty, of course? A. Yes; all wells are uncertain.

Q. Let me ask you this: In the light of subsequent events, it is quite clear, is it not, that the Tex-Penn leases had never produced 18,000,000 barrels of oil? A. There are some data in here, but my consideration terminated with a careful study as of August 1.

Q. I am asking you a specific question whether you do or do not know that? A. I do not know.

Q. That the Tex-Penn leases never produced 18,000,000 barrels of oil? A. I do not know. They may have produced 100,000,000 barrels so far as I know.

Q. You have been all through these exhibits, you say? A. Yes, sir.

Q. You do not find in these exhibits definite proof they never did produce 18,000,000 barrels of oil? A. There is some information in here as to what they did produce. I gave that consideration but not consideration as to analyzing how much the wells produced, and so forth.

Q. I am asking you whether you gave it enough consideration to know that the exhibits demonstrate that it made no such production? A. I did not give it that consideration; no, sir.

Q. What sort of consideration did you give it? A. I read them over, just to give it casual consideration.

Q. As you sit on that witness stand now, do you tell us that you do not know in the light of this proof that the Tex-Penn leases never produced 18,000,000 barrels of oil? A. I do not know how much the Tex-Penn leases produced except on August 1.

Q. Again you do not answer the question. I asked you whether you do or do not know in the light of this record that the Tex-Penn leases never produced 18,000,000 barrels of oil? A. Mr. Davis, at this minute, I do not know how much the Tex-Penn leases produced after August 1, 1919.

Q. Then you decline to answer? A. Whether it was 18,000,000 or not?

Q. Did you ever see Exhibit 49 in this case, Petitioner's Exhibit 49? A. Mr. Davis, I had furnished to me a list of all of the exhibits of both the plaintiff and the respondent. I went through those and checked them one after the other on both lists, looking over the exhibits. I stopped to analyze those which I felt were important in the determination of this matter.

Q. You did not feel it at all important to check your estimate of value on the 1st of August, 1919, by any subsequent events, did you? A. No, I do not think so. I was studying the history of this thing up to August 1, 1919. A post-mortem would not have helped me at all.

Q. It was a matter of no consequence from your point of view whether your estimate was or was not confirmed by subsequent events? A. I did not think I could make a fair judgment if I would take into consideration the subsequent events. I was placing myself just as I felt I had

been on August 1, 1919, and viewing my surroundings. Of course, I could not eliminate from my mind the experiences I had since then.

Q. Will you take a glance at Petitioner's Exhibit 49 and tell us what total that exhibit shows as the output of oil from these leases from August 1, 1919, to August 20, 1930? Here is the exhibit. A. I have it.

Q. Oh, you have it. It is closer to you than I fancied. A. This is marked Exhibit 49 in red pencil; then in white —I assume that is a photostat of black—Petitioner's Exhibit 49, then below that Exhibit XX-1. It says here: "Transcontinental Oil Company production from the Duke-Knoles, August 1, 1919, to August 20, 1930."

Q. That is the total? A. The total is 258,742.43 barrels.

Q. Then, with a copy of that exhibit at your elbow, you could have told me a moment ago, could you not, that on the face of this record it appeared that the Tex-Penn leases never produced 18,000,000 barrels of oil? A. I think I could have told you that.

Q. Why did you not do that? A. My mind did not click back to every one of the records all through. I have not in my mind the details of every record in this case. I do not pretend to have.

Q. Well, on the basis of that showing, it is quite apparent, as a matter of fact, that the Duke-Knoles leases were never worth $13,000,000, or anything like it? A. If you would give me that data and ask me if the Duke-Knoles leases were worth $18,000,000 or a much less figure than that, if my answer were to be based on that exhibit I would say they were not.

Q. If you had advised a client in 1919, August, to pay $13,000,000 for these leases, your client would have been badly hurt, would he not? A. As far as I know, and from this exhibit, I should judge he would.

Q. That would have added to the percentage of 25 per cent. of mistakes which you sometimes make, would it

not? A. In balancing up this percentage, it would have been another factor and used, but I doubt if it would alter it because I used the year 1918 and 1919. On this same type of information as made for our company it shows something over two and a half million profit; so that the gains we have made during that year—supposing this estimate had been charged to us, I cannot see that that would have decreased that percentage.

Q. Do you think if you had made two and a half million dollars profit on your lucky estimate that that would not have been more than counterbalanced by the 13,000,000 you would have had your client pay for this? A. I suppose so; yes, sir. You ask for per cents.; this is only one instance. We are basing instances on per cents.

Q. I asked you if this would have gone on the error side of your batting record. A. Sure it would.

Q. How much would your client have lost if you had your client pay $13,000,000 for it? A. Well, it would have been $13,000,000 less the sale price of 258,742.43 barrels and from that would be deducted the royalty, operating cost and drilling cost.

Q. There would not have been much left, would there? A. I do not imagine so. I would have been charged with the $13,000,000 and I probably would have lost my job.

Q. As a matter of fact, you never did advise anybody to buy these Tex-Penn leases, did you? A. I was never asked to advise on those.

Q. You were in the Desdemona Field in 1919, were you not? A. In order to be accurate, I made this statement, that I made a trip to the vicinity of the Desdemona Field. I could not obtain my notes to be sure I had been over the field, so that I stated it that way.

Q. What were you in there for? A. I was in there to check up some leases that were offered to our company.

Q. In the Desdemona or Ranger Fields? A. Well, they were in the vicinity of Desdemona.

Q. Did you buy them? A. No, sir, we did not.

Q. Why not? A. First of all because the surface was covered by a cretaceous formation, a formation which does not indicate what the sub-surface geological conditions might be; hence I could not determine the geology and at that time they were a considerable distance from any other wells. The prices or conditions under which we could buy them—I think I definitely recall it required the drilling of a well.

Q. Was that before or after the Duke discovery well? A. It was before.

Q. You were there again in 1932? A. Yes, sir.

Q. What was the purpose of that visit? A. The matter of appraising these leases came up and I find my mind works better to get an actual picture of conditions on the ground, the geography of it. * * *

Q. The surface was still cretaceous when you got there in 1932, was it? A. I classified it as that. I think it is.

Q. And the surface was as little indicative then of what was beneath it as twelve years earlier? A. Yes, sir.

Q. You did not find any activity in 1932, did you? A. There was, I recall, one well that was producing at this time. Aside from that it looked like a dilapidated town and a dilapidated country.

Q. Where was that well that was producing? A. That was No. 2 of D. W. Knoles.

Q. Was it pumping? A. Yes, sir.

Q. How much was it doing a day? A. The pumper told us it was a half barrel of oil and seven—I have a note of that, the amount he gave. 50 barrels of gasoline, I think he told me a day and a half a barrel of oil—50 barrels of gasoline—which is ridiculous. It was not making that I am satisfied, though the pumper told us that as we stood there on the pump and that is the only gauge I have on it.

Q. That is all that was doing in 1932? A. Oh, no. No. To the northwest of the———

Q. I mean on the Tex-Penn leases. A. I do not recall anything else.

Mr. Davis. You may inquire.

*Redirect examination by Mr. Fullerton.*

Q. First, Mr. Woodruff, let us look at what counsel designates as the cat and mouse proposition. A. Are you referring to an exhibit?

Q. I wish to. We seem to have only the original here. Have we more than one copy?

Mr. Davis: Yes.

*By Mr. Fullerton.*

Q. Have you before you, Mr. Woodruff, Exhibit 63? A. Yes, sir.

Q. I refer you to well No. 2 on Petitioner's Exhibit 63. A. May I sit at the table here?

Q. Yes. A. Your reference is to what?

Q. Well, No. 2 as shown in the left-hand margin. That is the Tex-Penn Knoles No. 1 well. Will you state the initial production, the production in May, 1919, and the production in July, 1919, as shown by that exhibit? A. This exhibit is headed "Well record, Desdemona Pool Symbols indicate source of material. Results of drilling at Desdemona prior to August 1, 1919." We are looking at the same exhibit, are we?

Q. Yes. A. In a column midway across the page, the column is headed "Initial production barrels." The figures are somewhat dim, but I should say 5800 barrels. The next column "Production, May, 1919," 200 barrels. The next column "Production, July, 1919," 600 barrels. There is an asterisk beside each of these figures, each one of the three figures, probably referring to footnotes or something of the kind.

Q. Refer to about an inch and a half to the right and a little above, just where the asterisks appear. What are the words just after that? A. "National Petroleum News." That is a single asterisk.

Q. Now, I refer you to well No. 18 and ask you to read the initial May and July production. A. Initial production 400 with an asterisk, production for May, 1919, 12 with an asterisk, production for July, 1919, 45 with an asterisk. I assume those refer to the National Petroleum News as the source of information.

Q. Now, refer to well 43. Does a similar condition obtain there and will you give the figures? A. Initial production, 500 barrels with an asterisk; May production, 85 barrels with a double asterisk; July production, 125 with a single asterisk. The double asterisk refers to the Oil Weekly as shown at the head of the last column on the page.

Q. Now, I refer you to well 63 on the same exhibit. A. The Southland Oil Company?

Q. Yes. A. Yes.

Q. Give us the figures on that. A. Initial production, 400 barrels. It is a little obscure here, but it looks like there is an asterisk there.

Mr. Davis: It is a cross mark.

The Witness: Yes. The column in May, 1919, 125 with a double asterisk and in July, 200 with a single asterisk.

*By Mr. Fullerton.*

Q. Now, those three items are all taken from different sources, are they not? A. Which three items, the last three?

Q. Yes. A. What number again is that?

Q. No. 63 well. The symbol appearing after the— A. The first figure does not give the source, as I understand it.

Q. Let me ask you a question to illustrate. The figure appearing after the 400 is the cents sign. I ask you to look toward the upper right-hand corner, just under the double line, at the end of the line, and ask you if a cent sign appears there? A. The last of this list showing signs has a cent sign and "David Donoghue" after it.

Q. The initial production has the cent sign and the May, 1919, production has the double asterisk, indicating it comes from the Oil Weekly and the July production has a single asterisk indicating that it comes from the Petroleum News? A. Yes, sir, as I understand it.

Q. You have stated, Mr. Woodruff, when you were considering the variables of these wells the drilling deeper was mentioned. You said that you considered other things. Now, were the items which I have pointed out taken into consideration when you spoke of the variability of the wells in the Duke-Knoles Field? A. Those items were studied in order to show the variability, but in fixing the actual valuation they were not given serious consideration because they were different sources. Two of these sources were trade journals. I felt that the ordinary information in a trade journal is not one that we can use as a basis for spending money. It is a source of information, but—I write some for the trade journals myself and my writing is intended for information. If it is written for a Government publication that is checked and rechecked and I accept it as it is presented.

Q. In considering the initial production and the decline of wells, which would you consider the more reliable data, information such as this where it is partly from trade journals and the information on a particular well is sometimes from the same source and sometimes from another source, or the pipe line runs as shown by the record here? A. The pipe line runs are the best information we can obtain.

The axis of the Bend Arch, as shown by Exhibit CZ, has a nearly north and south direction. There is no justifiable reason for drawing a line east and west across the axis of the structure north of the Tex-Penn block to determine ultimate productivity. I see no reason for fixing the trend of the structure or the trend of production in any other direction the trend of development being nearly north and south.

Q. What do you mean by "reasonable certainty" as applied to fair market value? A. Well, it seems to me that in determining how much any field will produce it is an estimate until that field has become history or until the wells have been drilled and completely exhausted. I feel that such a thing is an estimate up to the point that we have determined how much oil can be produced. Then there is a less estimate as to what it can be sold for, but a considerable estimate. The only certainty I can see in that is that a man experienced in the field, if he is in the field, and he can be, I think, reasonably certain that he could find a buyer and seller for leases and the man familiar with the field can fix with reasonable expectation or reasonable certainty what the buying and selling would be, not accurately, but near it.

Q. How do you gauge fair market value? A. Well, fair market value——

Mr. Davis: I object to this as cross-examination of counsel's own witness.

The Presiding Member: I will overrule the objection.

Mr. Davis: Exception.

A. Fair market value to me for any product is the price at which the product is exchanged for cash or its equivalent.

As applied to oil leases, I gauge that by my experience in the oil business.

*By Member Van Fossan.*

Q. In 1919, how much could you determine as to subsurface geological formation, structure and strata from the surface indications in an undrilled territory? A. Over a great deal of the territory there were exposures. Wherever we could get those, as we could get them at Glenn Pool, Cushing, Butler County, Kansas, and the Elbind Field and so forth—there were exposures enough—our results showed considerable accuracy.

Q. Were there adequate exposures in this field to form any guide for a geologist? A. No, sir, there were not.

Q. There were no exposures? A. No, sir. There is an exhibit here, if I might use it to illustrate that. It is Mr. Donoghue's cross-section (Petitioner's Exhibit 76). I will point out a little feature on that that will answer your question, if I may take the time. You will notice that just to the upper right-hand corner of the exhibit the formations are marked "Trinity." That line we are accustomed to show as a broken line. These formations are very much older. It seems this formation lapped over at the Desdemona Field, lapped over in such a way as to conceal the geology which would carry the oil underneath; so that we really cannot tell anything about the structure from the surface geology.

Q. I was wondering whether there was any way by knowing the output daily of a well to determine whether it is a flowing well or a pumping well in all probability. A. The results as recorded do not show. We marked it whether it is a natural or pumper. Natural generally means to us that it flows of its own accord. If the record says natural, flowing a thousand barrels naturally, we take that to mean the production has simply flowed.

Q. From your experience, can you indicate any point at which the probability is that it has ceased to flow and has become a pumper in the number of barrels that are produced from the well? A. When it is——

Q. In other words, when it gets down to 100 barrels or 50 barrels or 20 barrels, when does the natural flowage normally cease and you have to put in a pump? A. There is no way of determining that. That depends upon the amount of gas that is in the oil. Some wells will pump a thousand barrels with no flow at all. They won't flow at all and will pump a thousand barrels. Others will flow until they are only flowing a few barrels.

Member Van Fossan: That answers the question. Thank you.

Mr. Fullerton: That is all.

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GEORGE C. MATSON, a witness called on behalf of respondent, was duly sworn, and testified as follows:

*Direct examination.*

I live in Tulsa, Oklahoma. I have been a geologist for many years, also an oil operator and royalty buyer. I was educated in the public schools and Franklin Academy in Nebraska. My college education was at Tome College, where I received the degree of Bachelor of Science, and for one year I was a graduate student at the University of Nebraska. From 1901 to 1903 I was assistant in geology at Cornell University, where my duties involved the teaching of geology, especially to civil engineers, although I also assisted in general courses in geology. I was allowed a certain amount of time for research work and received the degree of Master of Arts in 1903. I then became an instructor in geology in the University of Illinois. From there I went to the University of Chicago, where I was a Fellow in the Department of Geology. My duties in Chicago involved some teaching but I was engaged mostly in research geology and I received the degree of Doctor of

Philosophy from that university. I resigned my fellowship at Chicago in 1906 to become an assistant in the United States Geological Survey, and became geologist during the years 1906 to 1916. I finally resigned from the survey in 1917, but was on leave of absence during part of both 1916 and 1917. My duties involved the making of surveys in the field and the writing of the reports as to results of surveys. I made such surveys in a number of States, including Kentucky, Indiana, Maine, New Hampshire, Wyoming, Florida, Alabama, Mississippi, Louisiana and Texas. I made reports on various mineral resources, underground water, phosphate, coal, oil and on one gas field. I examined several oil and gas fields during the ten years I served on the survey, and made rather exhaustive examinations of the Red River oil and gas field in Louisiana, the Naborton Field and the Caddo gas field in Caddo Parish, Louisiana. I developed the investigation in the Caddo Parish Field to the point where it was pretty well outlined, and in the Red River Field, at the request of the landowner, I suggested a location for him before the field was really opened. When drilled, this location gave him a thousand-barrel well. Geologists of the Geological Survey were not permitted to receive remuneration but were permitted to answer questions for a landowner about his own land. The results of the examination in the Caddo Field appear in Bulletin 619 of the Geological Survey.

In Texas I examined and made surveys of the Corsicana and Powell oil fields, the results of which will be found in Bulletin 161-F of the Geological Survey. I recommended a deep test in the Powell Field and that field was subsequently opened by the drilling of deeper tests. I made a special examination of the gas field at Mexia, Texas, about the fall of 1914. There was a shallow gas field there with wells ranging around 1,000 feet. From my knowledge of geology I believed that this field would justify a deeper

test and at the request of the owners of the property I made them a location but they never drilled it. However, another company who did drill within a few hundred feet practically of my location opened the very prolific Mexia oil field.

I started at a salary of $100 a month with the Government and was promoted to $250. I started to work for the Gulf Company in 1916 on special investigations on the basis of $6,000 a year. I stayed with the various subsidiaries of that company until 1921. My salary was increased from time to time, and it was finally for some time before I left them $12,000 a year plus a bonus. The maximum I received, including the bonus, was about $17,000 a year. I left the Gulf in 1921 and together with Mr. and Mrs. J. B. Schermerhorn organized the Schermerhorn Oil Company to operate in the Mid-Continent Field. My salary was fixed at $800 a month, with a bonus of 10 per cent. of the stock of the company, which was worth a great deal more to me than the salary. I disposed of my interest in the Schermerhorn Oil Company in 1928 and embarked in the royalty business for myself. I have not been very active and hope conditions will improve in the oil business to justify activity.

My first work for an oil company was in 1916 when I went to Mexico to make an examination for the Mexican-Gulf Oil Company. They had an option on certain ranches in the oil fields of Mexico on which they had paid the sum of $25,000, and agreed to pay within a short time $225,000 additional if they accepted the properties. I spent about six weeks in making that examination. The area to be covered was not large but we had to dodge bandits and that kept us rather busy. I recommended that the properties should not be purchased and they were not. Some years later another large oil company did take a lease on the property and drilled a dry hole there, so that I feel my recommendation was justified. I then went to South

America to examine Colombia for oil possibilities. It was to be made the basis of investment if my recommendation was favorable. I spent eight months on that investigation, returning to the United States in April, 1917. My report was filed, but we were too busy in this country to give it much consideration during the war and it was shelved. I was then assigned to the Gulf Refining Company of Louisiana with headquarters at Shreveport. My duties were to investigate prospective oil territory, to examine areas where wildcat wells were being drilled and acreage was being blocked. We did not make any large purchases, but bought plenty of acreage at a few dollars an acre. No very high-priced purchases were made while I was there, which was for a period of four months. I was then transferred to Gypsy Oil Company at Tulsa, another subsidiary of the parent corporation. I had charge of the Gypsy Oil Company's geological work in a number of States. They operated chiefly in Oklahoma and Kansas, but also did considerable work in the Rocky Mountain States, especially in Wyoming and New Mexico, later in Montana.

About the close of the war we again turned our attention to Colombia and broadened our activities to other Latin-American countries. I sent parties of geologists to Santo Domingo, Haiti, Guatemala, Honduras, Nicaragua, Panama, Venezuela, Trinidad, Bolivia and Argentina. I later on visited most of these parties and passed on their field work. My position called for a careful study of the conditions in the various areas where we thought we might find favorable indications for oil and gas. If these were found, we acquired leases, if we could do so, at prices we were willing to pay. In these days one of the most active areas in the State was in the Osage Nation. There all leases were sold at auction. We made a study of the list of tracts to be offered, made investigations of the more promising looking territory, and finally decided what prices we would pay. That is, we fixed a maximum price

we thought we would be justified in paying for tracts we wanted to buy. Before the Osage sales I met with the executive department, usually the vice-president in charge of the Gypsy Oil Company, the head of the production department, and occasionally one of the scouts. We decided on our prices and after submitting those to the head office we went to the sale and bought what we could get at those prices. Sometimes we exceeded them a little and very often we let them go. The highest price we paid during the time that I was with the company was $600,000 for a lease on 160 acres, which was at that time the highest price that had ever been paid there. They went much higher later. While I was with the Gypsy Company I made an appraisal of the Gulf and Gillespie Oil Company properties which we understood were for sale. I endeavored to find some of my old notes, but the records of the company had been put in the warehouse and I could not locate them. This company at that time had a production of about 2500 barrels a day. To the best of my recollection the valuation ran somewhere from four to five million dollars. We did not get the company, somebody else bought control of it, presumably at a higher price, but I could not find what price was paid. About the spring of 1919 the Tropical Oil Company operating in Colombia drilled a big well and we were offered a controlling interest in the concessions of the company and their wells for certain considerations, including additional drillings and pipe lines. It is pretty hard to estimate what a 350-mile pipe line through Colombian jungles will cost, but subsequent developments indicated that $10,000,000 was low. Besides, there was several million dollars for the drilling that would have been required in order to obtain the half interest. Our recommendations on that property were unfavorable. About the same time I made an appraisal of all the Gypsy Oil Company properties for the purpose of Federal income taxes. The Gypsy is a large producing

company with several hundred properties scattered through Oklahoma and Kansas.

With the Schermerhorn Oil Company I was vice-president and secretary and managed the Tulsa office. Mr. Schermerhorn lived in Minneapolis. We operated on a small scale because we did not have much money to use in operations. About the time I helped form this company I took on a little oil venture of my own in the Osage Nation and with some friends bought a lease on two 160-acre tracts. The consideration for my portion was $500. We sold the lease on one of them for enough to get all of our money out and a few hundred dollars profit, and held the balance until the well was completed. I sold my interest, which was then one-eighth, in one of the 160-acre tracts for $100,000. We invested during the time I was with the Schermerhorn Oil Company an average of about $100,000 of new capital for all purposes. We drilled some wells, bought some cheap leases, but specialized in buying those leases which were close in to production which we regarded as proven leases. Just before I left the company I engaged a man whom I regarded as a competent valuation engineer. I did not want to appraise our own properties and the appraisal was to go to a bank. This valuation was approximately three and one-half million dollars. Shortly after I sold my one-tenth interest for $225,000 in cash and retired from the company. My one-tenth interest did not bring the 10 per cent. of the valuation because it was a minority interest in a closed corporation. Since that time I have been buying a few royalties when I could get them cheap enough to satisfy me.

I am a member of the American Institute of Mining and Metallurgical Engineers, the American Association of Petroleum Geologists, which I served as president at one time, the Geological Society of Washington, the Washington Academy of Sciences and am a Fellow of the Geological Society of America.

I saw the Duke-Knowles leases in October of this year (1932) and have read the testimony of Mr. Oliver, Mr. Ralph Davis, Mr. David Donoghue, Mr. Simon and Mr. Powers. I heard parts of the oral testimony of Mr. Simon and Mr. Powers and the testimony of Mr. Woodruff. I have read some of the depositions, including that of Mr. Moody, vice-president of Mid-Continent Petroleum Corporation, and Mr. Sinclair, assistant treasurer of Magnolia Petroleum Company, and Mr. Bowyer of the Sun Company. I took a list of the exhibits which have been introduced at this hearing and looked at all of them.

*By Mr. Fullerton.*

Q. I am going to ask you, Mr. Matson, for your opinion of the fair market value of the Tex-Penn Duke-Knoles leases. In using the term "fair market value" I mean the price at which a seller who is willing but not obliged to sell and a buyer who is willing but not obliged to buy will deal, both having knowledge of the facts involved. This definition contemplates that such price be in cash or its equivalent and ascertainable with reasonable certainty and realizable within a reasonable time, considering the character of the property to be valued. In forming the opinion for which I am going to ask you, you are to exclude from your consideration all facts occurring after August 1, 1919.

You may assume for the purpose of your testimony the following facts as correct: That the Tex-Penn Duke-Knoles leases consisted of approximately 3,479 acres, located in Comanche, Eastland and Erath Counties, Texas; that the location and acreage of these leases, the location of the wells and the dates of completion on the Duke-Knoles Tex-Penn leases and the location, and dates of completion of all wells in the Desdemona Field in the area covered by the map are shown with substantial accuracy

on Respondent's Exhibit AS, which is a map; that Petitioner's Exhibit 30 shows as to the Tex-Penn Duke-Knoles leases the name and number of wells drilled, the completion date of each well, the total production of oil from the oil wells on this group on August 1, 1919, and the total monthly production from each oil well on these leases and the monthly production of each well on these leases to the end of July, 1919; that Petitioner's Exhibit 73 shows the production of the Magnolia Hogg Creek No. 1 well and the J. N. Duke leases five months to August 1, 1919; that Respondent's Exhibits AR and CT, which are well cards, show the records of the Gulf Production Company as to wells completed in the Desdemona Field prior to August 1, 1919; that as shown by Petitioner's Exhibit 69, 241 wells in the Ranger Field produced 13,167,495 barrels of oil prior to July 16, 1919, and were still producing at the rate of 74,604 barrels of oil daily. You may further assume that the regional structure as known as of August 1, 1919, is shown on Respondent's Exhibit CZ; that the log of the discovery well is shown in Form O, which is a part of Respondent's Exhibit T; that the cost of drilling a well in the Desdemona Field was $37,398, as shown in Petitioner's Exhibit 75; that the cost of production and operation was 25 cents per barrel; that the pipe line runs from the Desdemona Field prior to August 1, 1919, are shown by Respondent's Exhibit AU; that the applicable price of crude petroleum is shown by Stipulation 8 filed in these appeals.

Assuming the above facts to be true, and considering also what might on August 1, 1919, have been reasonably anticipated from those facts, and in the light of your experience, are you able to form an opinion of the fair market value as of August 1, 1919, of the Tex-Penn Duke-Knoles leases in Eastland, Erath and Comanche Counties, Texas? Answer yes or no. A. Yes.

Q. Do you require any further facts to form your opinion? A. No, sir.

Q. Have you formed such an opinion? A. Yes, sir.

Q. Would that opinion, Mr. Matson, be modified in any respect if the date as of which you are giving that opinion was July 25, 1919, instead of August 1, 1919? A. No, sir.

Q. What, in your opinion, was the fair market value on August 1, 1919, of the Tex-Penn Duke-Knoles leases?

Mr. Davis: Objected to on the ground that the hypothesis put to the witness includes immaterial and irrelevant facts.

The Presiding Member: The objection is overruled.

Mr. Davis: Exception.

The Presiding Member: Note the exception.

A. $13,500,000.

The essential factors in arriving at that opinion are the regional and local geology, the depth and character of the drilling as indicated by the wells, especially the discovery well, of which we have a log; the cost of the drilling, the amount of oil that a prudent operator might expect to recover, the cost of such recovery, the grade of oil, the market for oil as indicated by the presence of pipe lines and the price of oil as indicated by the posted market price, the size of the leases and their position in the block and the market for such leases.

The method of arriving at the valuation was by taking the production within the boundaries of the block itself and after eliminating certain acreage which I considered doubtful, estimate from the production already obtained the possible production from the block, the computing of the value of such production on the basis of the posted price, which was $2.25 per barrel, the deduction from that value of the cost of development, that is, the drilling of wells and the cost of operation.

Geologists who were at all familiar with North Texas knew of the existence of this great regional structure of

Bend Arch. The local structure I will mention only briefly because it has been covered by Mr. Woodruff. It was determined from the logs of the wells, or, rather, from sand cards, which represent the information we had about the wells that are in evidence in this case. We did not have as much information as we might have had if we could have gone beyond the date of valuation, August 1st. We had to use what information was available prior to that date. From that we get a generalized structure map. In regard to that map I believe the major features are correct that there was or rather is a structural high on this block of leases. The leases not only covered a good part of the highest part of it, but extended down the slope. I do not want to be understood to mean that I would grade the leases exactly in regard to their position on this structure except to consider that they are on it. As to the presence of oil in this structure, we already have the evidence prior to the date of valuation. We also have in the testimony of Mr. Donoghue a comparison which shows that this is geologically similar to Ranger except shallower.

A very important factor in forming an opinion of the value of the Tex-Penn block of leases was the compact nature of this block. It made it possible to operate and develop it as a unit and eliminate a lot of unnecessary drilling. It should perhaps have eliminated 50 per cent. of what might have been required if the block had been scattered, because it was always necessary to protect the lines against the drainage by wells on adjoining properties. Where people can get on all four sides of you they can make you drill more wells than if they were only on one side of you or when outsiders are not able to get to you at all, as some of those leases are surrounded by the Tex-Penn leases.

The size of the block was pertinent. It forms a unit there for operation and if as good as it looks as of date of valuation, could form the basis for the formation of a com-

plete unit for the oil business, including pipe lines, refineries and marketing systems. I had considerable knowledge of the competitive market for leases at that time. Prices seemed to be rising in most districts. American companies were extending their operations out into foreign countries. It was about this time I had my parties scattered through Central and South America so extensively. There seemed to be a feeling among the oil people that the amount of oil in sight was not sufficient to guarantee production for a long period and they were reaching out for more leases. Transportation facilities are naturally important because if the leases are close to a pipe line you can dispose of your oil, if you sell crude oil. There were leases of major purchasing companies within a reasonable distance of this block, say within 100 miles. This oil, according to the information I have from the records, ranged from 35 to 40 degrees gravity, which is a good grade of oil. It is good for refining and at that time it was at the lowest, about as high as the average gravity of our Mid-Continent group, which ran somewhere between 34 and 36 degrees.

The distribution of the wells surrounding the Tex-Penn Duke-Knoles leases seemed to me to be very significant. Of course, the most important factor in valuing these leases was the existence of the production on the leases themselves. We had one well there that had an initial production, according to the records in this case, which ranged from 3,000 to 6,000 barrels. It is apparent that well was pretty attractive because outsiders got just about as near as they could to drill some more wells to try their luck. We have some down the west side and north side. Those were the nearest opportunities to drill, with the exception of the Magnolia, and, of course, they took their time to drill. There were also some small producers and dry holes on the other side. This fact, taken in connection with the known structure, suggested to my mind that this was a

valuable oil property, that these leases were in the heart of the structure, that these people who tried to get as close as they could to these wells had drilled wells which indicated the presence of sand, oil and gas, but had not got close enough to get into the pool. I have prepared a map to show my idea of the values or other factors. Such map was marked Respondent's Exhibit DH for Identification. (See folder of Unprinted Exhibits.)

On this map DH I drew certain lines, a heavy black curve—this is one on the west. On this side the green coloring represented to my mind what was proven on the date of valuation, August 1, 1919. I rejected the parts colored in yellow and drew those lines as near as I was able to get information midway between the nearest dry hole and producing wells. That results in elimination from the block of about 900 acres, about 25 per cent., I believe. I am not trying to say that this acreage outside the lines is not of value. I believe it had a value—a market value—but I am trying to be conservative and allow for the hazards by eliminating this territory.

I have made a list of the area covered by the darker green. Such list was marked Respondent's Exhibit DI for Identification. (See folder of Unprinted Exhibits.)

I regarded the area marked in green on Respondent's Exhibit DH, containing 2,577 acres, as proven area. There were six wells which had produced oil prior to August 1, 1919, and I eliminated forty-eight acres on account of those six wells that had produced. They were not through producing, but I cut them out of the total acreage just as if they had been through producing. The well in the white area that is altogether within the green area and just south of the discovery well is the Magnolia-Duke seventy acres which I considered along with the wells in the producing area as it was within the limits of the block and had produced oil.

I believe that the lines could be protected and the acreage developed with about 125 wells, about one well to twenty acres. It is very difficult to say in advance how many of them would be offset wells, perhaps half of them. They could possibly force you to drill seventy-five or eighty if the offset owners wanted to. Those things are usually developed after you get your program of drilling under way. I used the cost of $37,500 per well for drilling. I think that is a way too high, but I believe petitioners used that figure so I used it.

I determined what appeared to me to be the expected value by computing the number of barrels of oil that I thought would be expected from the proven area. I used the six wells on the Tex-Penn lease that had produced oil and the one well on the Magnolia-Duke lease within the Tex-Penn block.

I have prepared two computations, the second on a slightly different basis from this one. Such computations, consisting of two sheets, were marked Respondent's Exhibit DJ for Identification (see Folder of Unprinted Exhibits).

Six wells had produced on the Tex-Penn block, one Magnolia had produced within the block making a total of seven. The production from the six wells on the Tex-Penn block to the date of valuation as given from Petitioner's Exhibit No. 30 is 421,140.23 barrels. The production from the Magnolia well as given on Petitioner's Exhibit No. 73 was 92,486 barrels. The total production from these seven wells was 513,626.23 barrels, or an average production per well of 73,375.17 barrels. Allow ten acres per well this figure can be divided by ten, to give a result of 7,337.51. Applying this average to 2,529 acres of proven area of the Tex-Penn after eliminating forty-eight acres for six wells, we have gross expected of the wells of 18,556,562. This is obtained by multiplying 7,337.51 by 2529. The gross barrels multiplied by the

market price, $2.25, giving a gross value of $41,752,264. The gross barrels multiplied by 25 cents to obtain an operating cost, gives us $4,639,140. 125 wells at $37,500 apiece would cost $4,687,500. The gross value includes the value of the farmers' one-eighth royalty, so I deduct one-eighth. Seven-eighths of that gross value is $36,533,231. After deducting development cost of $4,687,500 and operating cost of $4,639,140, we have an expected value of $27,206,591. That represents nearly twice the $13,500,000 price I have mentioned. I make my estimate of market value on the basis of allowing for all the hazards that I think might possibly come into the development and producing of the oil. Then in addition to that I want a profit when I go into the transaction. I considered that this deduction or practically the elimination of 50 per cent. of this expected value would take care of those factors.

The second computation is made by allowing only eight acres per well instead of ten, and the expected value under that computation is $35,180,124. I base my fair market value chiefly on the computation that I gave first on the basis of ten acres per well.

I tested my views and opinion by comparison with similar fields that had had a longer history. One of those is the Ranger which I chose because it is nearby and is in general comparable with the Desdemona Field. As I recall Ralph Davis' testimony he thought that that comparison could be made to arrive at a valuation. As I recall the exhibits of petitioner, some such comparison probably was made. At any rate, there were a lot of Ranger figures in their exhibit. I think such a comparison could reasonably be made. I made the test by accepting as true the total production from the Ranger Field of 13,167,495 barrels as taken from Petitioner's Exhibit No. 69; the total number of wells 241, the present daily production 74.604 barrels. By dividing the total of 13,167,495 by the number of wells, 241, we arrive at 54,637 barrels per well to date.

Ranger had been producing a long time, but it is interesting to compare those figures with the figures on the Tex-Penn leases where we have on the basis of seven wells 73,000 and over per well. I made computations similar to those that I made for the Desdemona Field and arrived at an expected value, based on these figures, of $25,589,000. In that value I took no account of the present production of the 241 wells listed in Exhibit No. 69. It had some value, but it is difficult to say exactly how much. The data of the present production of Exhibit No. 69 is, I believe, in July, 1919. The present daily production when distributed among 240 wells means those wells are still making 309.56 barrels each per day.

I also compared these computations with those of the Glenn Pool and the Cushing Pool in Oklahoma. I chose these two pools for comparison because these were large pools comparable in a general way with Ranger and Desdemona. They had been producing a long time and we had a great deal of information about them. The length of time they had been producing was important because it serves to give a background or history and to show what the fields actually will do, or rather have actually done over a period of years. These pools were somewhat similar in geology and in the general character of the formation.

*Mr. Fullerton.*

Q. Did you have before you any information concerning the production of those pools? A. I had a bulletin of the United States Bureau of Mines, Bulletin No. 177.

Objection by counsel for petitioner to any further testimony based on the Glenn Pool or the Cushing Pool or Bulletin 177, on the ground that Bulletin 177 was not introduced in evidence and was withdrawn by the respondent. Objection sustained, and exception allowed the respondent.

I consider the figure of $37,500 per well as cost of drilling a well as very liberal.

*By Mr. Fullerton.*

Q. Will you please give your reasons for so believing?

Mr. Davis: May I ask whether the purpose of this evidence is to contradict the respondent's witness, Sinclair?

Mr. Fullerton: No; if the Board please, it is to have this witness give his opinion as to the necessary costs. Sinclair testified to the cost of drilling certain wells, or the average cost of certain wells, I believe.

Mr. Davis: The respondent's witness, Sinclair, testified that the average cost of drilling thirty-nine wells in this field was $37,629.51, and I submit it is not competent for the respondent to contradict the testimony of their witness.

Mr. Fullerton: I believe there is a difference between the actual cost of drilling wells in the particular field, and what this witness believed would be the necessary costs for drilling 125 wells, which he says would be necessary here. In other words, a company drilling 125 wells might be able to drill considerably cheaper than one who was drilling forty wells, or one who was drilling a very few wells. I do not think there is a contradiction.

The Presiding Member: Well, let us go ahead. Let the objection be overruled.

Mr. Davis: Note an exception.

In the testimony from the deposition of W. H. Boyer of the Sun Company, they have a tabulated list of nine wells at a total cost of $280,240, or an average of $31,137.08. One well on the list went unusually high for some reason and reached a total of over $37,000, but several of them were below $30,000 in cost. It seems to me that that witness gives the cost figure more nearly what would be re-

quired for drilling several wells in that field. I am under the impression that the petitioners have an Exhibit No. 75 in evidence in regard to the cost of drilling such wells containing the estimated cost for wells in three different fields. Referring then to the Desdemona Field it seems to me that several items in that estimated cost are high. To build an 84-foot derrick 22-foot base with 6-inch rig irons on it at a cost of $4800 seems to me to be much higher than is necessary. My own estimate on that would be as low as $3250. Then they drilled 2700 feet of this hole at $4 per foot. In Ranger the same portion of the hole is drilled on the basis of $3 per foot. The Ranger figure is taken from this same exhibit. I see no reason why it should cost more in this field than in Ranger to drill the same portion of the hole, drilling through the same formation, according to Mr. Donoghue's section shown in Petitioner's Exhibit 76. I think the amount of black lime they would have to drill was estimated at 200 feet in Ranger and 150 feet in Desdemona. They allowed $10 a foot there in both cases, but there is only 150 feet here in Desdemona, which brings the cost down to $1500. I think that is about right. They have a ten-day shutdown time which might be necessary in the initial wells on the pool, but ten days shutdown time is rather excessive for any contractor who is drilling a number of wells. That shutdown time is rated at $75 per day, and that gets a charge of $750. There is plenty of gas here to use. Whenever it is used on the same lease, it pays no cost; and when it is used on some other lease from the well, from the one the well is on, it pays a royalty. So that that $750 ought to be cut down to about $100. There is a water service of $400. I believe, as a matter of fact, it would be very profitable for the man who was furnishing the service. I see no reason why they could not get their own water and take care of their own requirements for less than $400.

Their tanks and flow lines are put at $3,000 per well. When you are operating those leases you can use your tanks for the feed rather than for the individual wells, so that the charge need not be charged to every well. The casing requirements seem to be reasonable, but when you finish one of these wells, the practice would be to pull the 12½-inch casing and the 10-inch casing and use it over again in some other well. Therefore, you have those items on which you only charge depreciation. It is hard to tell how long they would last, but I think 10 per cent. is reasonable. The 8¼-inch and the 6⅝-inch casing requirement would stand as they are. The cost of the shots would be the same, shots with 200 quarts of nitroglycerin. I have not the figures to show exactly how much reduction that would make in the grand total, but there would be a substantial saving there. They have added 10 per cent. for unforeseen expenses which in view of the high charges, the liberal charges in the balance of the statement would not be necessary. From all of these figures I can only arrive at $37,399 for producing a well. They allow a salvage of only $9,257 which presumably is the casing and rig iron, and tankage. I submit that with $13,899 cost per casing, and $3,000 for tankage, the salvage should be greater even for a dry hole. They drill a dry hole, in other words, for $28,141, and it could have been drilled for much less. A driller putting down 125 wells should be able to drill them much cheaper than if he was drilling but one or a dozen wells. He would be able to move his equipment from one well to the other without having to go long distances, and would save time, labor and hauling costs. He would not have to have such a large amount of equipment for the same number of wells by transferring the equipment from one well to another. I might say, that this W. H. Boyer's deposition, the auditor of the Sun Company, is impressive to me because these were contract wells and the contractor usually gets all he can. If they had

drilled only nine wells at a cost of $31,137.88. I should think that if they were going to drill a large number of wells, they could reduce it to $30,000 easily.

I have read Mr. Moody's deposition which dealt with the wells on the J. T. Carruth twenty-acre tract drilled by the company that was then the Cosden Oil & Gas Company, now called the Mid-Continent-Sterling Corporation. The point of special interest in the deposition to me was that they drilled a large gas well on this property and in a short time it became an oil well of substantial size and production. As I recall, the estimate that Mr. Moody gave in his deposition was 90,000,000 cubic feet. It is rather difficult to gauge a gas well of that size because it is a dangerous thing to get too close to, so I presume they estimated it. That was completed April 2, 1919, and it began producing oil in July, a couple of months later. July 2nd, that well was producing 3595 barrels of oil. That was of especial interest to me because in the Tex-Penn leases there were some good-sized gas wells, and there seemed a reasonable chance that those wells might become oil wells if the gas pressure was relieved.

I heard part of Mr. Powers' testimony and read it all. He stated that the tract adjoining the Tex-Penn block, that a gas well had come in and after about a week had started spraying oil, and later it became an oil well. He also calls attention to another gas well, the Cattlemen's Oil Company, on the Hogg lease, which came in as a gas well and subsequently became an oil well.

I have given consideration to the initial production figures in relation to the determination of the ultimate production of oil wells. It would be difficult to say when I first gave consideration to it, but I have considered it rather carefully in the last two or three weeks. Of course, I had considered it prior to that time. I decided that the initial production, as the figures have always been obtained in the oil industry, were not a reliable guide to the ultimate

production out of a well. This was suggested by the way in which the initial productions are commonly obtained. I watched the initial production figures that came in on our own wells, and later checked them against the twenty-four-hour reports, reports of the first twenty-four-hour production, and decided that in many instances the initial production figures were estimates only, and that their reliability seemed to vary a great deal with the optimism of the man who made the estimate. In a new field where the tankage is not always available to make the twenty-four-hour test, and especially in the case of large wells, it seems to me that the initial figures that I have observed and have had called to my attention nearly always exceeded the actual. On some of the small wells, the initial figures might be more accurate. After the first well is drilled on a lease, the practice has always been to run the oil into the same tank, and the gauge figures, both the initial and otherwise, represent the gauge of the lease. So that the subsequent wells after completion of the field are necessarily estimates. I recall an instance when I was detailed to go to South America and investigate the Tropical Oil Company's holdings because a large well had been reported on that concession. The figures were, as I recall, about 12,500 barrels initial. I sent an assistant to investigate this and he reported an initial production of 8,000 barrels. Later in testing the well, I found that my assistant, because they had 50-barrel tanks and no other tankage on the site of the well, had gauged the well into the 50-barrel tanks and then computed from that the twenty-four-hour production, and that gave us 8,000 barrels. When we came to examine it, we obtained the permission of the manager of the company to figure it in our own way. So we opened the well wide and let it go regardless of the tankage. The first fifteen minutes it flowed twice as high as the derrick which was 84 feet. By the end of the second fifteen minutes it was flowing down just above the top of the derrick.

At the end of the third fifteen minutes, it was flowing down inside of the derrick, perhaps 16 feet from the top and it gradually got lower and lower until finally it was just flowing a very little bit above the top of the casing-head. We then turned it into the 50-barrel tanks and checked the time required to fill each 50-barrel tank. At the time when we started the well into the tanks it had been flowing three hours and it took one-half hour to fill each 50-barrel tank. It was then flowing at the rate of 100 barrels per hour. If you wanted to figure it, we could say it was a 2400-barrel well because there is that many hours in the day; but it was the judgment of those of us who were examining the well that it might make 2,000 barrels the first twenty-four hours. We thought we had blown the head off in the first three hours and had gotten it down to a rate that might give us the true twenty-four-hour production. I think estimates are about as reliable as the knowledge and experience of the estimators, but a well with a lot of gas, a large flow, may look very impressive the first fifteen or twenty minutes, and look very poor at the end of a few hours. So it depends on just what the observer sees there as to what conclusion he will draw.

At a point nearer to Desdemona, I had experience in Southern Oklahoma where we were completing a well. The assistant on the job called me after they had swabbed the well for a couple of hours and said that the well was producing at the rate of 1800 barrels per day. He was very much excited and I told him when he got the first day's actual gauge and the head had blown off the well, I wished he would send it to me. He did not call me, but he sent it by mail and the well was making 102 barrels. I have another instance in Southern Oklahoma and that was rather an amusing experience to some people as well as expensive. A company was drilling a well there and got into sand and drilled the sand, and on account of cold weather they shut down for about three or four days and

put a cap on the well. They had a 10-inch casing in the hole and when they opened it up it promptly flowed 67 barrels. It took about fifteen minutes to get that oil out of the hole and then it stopped flowing. One of the men immediately cabled to some of the owners in London that he had a 6400-barrel well. The well really made about 100 barrels when it got to producing; the fifteen-minute flow being largely the result of the accumulated oil in the hole and the accumulated gas pressure when it was shut down.

My conclusion would be that the initial production figures as we get them in the oil industry are too unreliable to be used as the basis for the computation of the ultimate production. I made a study of some of the exhibits in the case having in mind the different initial productions as given by different people, or from different sources. I especially paid attention to the petitioner's figures on the D. W. Knoles lease, where three wells had been drilled prior to the date of valuation, where we have some widely divergent figures on initial production. I have made a tabulation of the result of that study. Such tabulation was marked Respondent's Exhibit DK for Identification (see Volume of Exhibits).

Petitioner's Exhibit No. 74 shows the petitioner's own wells. On that exhibit there is an accumulative production shown of 590,625 barrels on the Knoles property. I checked the records to see if they had drilled any additional wells later, and found none. The initial production of these three wells—the total is given on Exhibit No. 74—is 9,430 barrels; and the cumulative production divided by that gives 63 barrels ultimate for each barrel of initial. On Petitioner's Exhibit No. 63, I found the initial production of these three Knoles wells given as a total of 6430 barrels, making a discrepancy between the two exhibits of nearly 50 per cent. of the smaller one. If the cumulative production be divided by the figure obtained from Exhibit No. 63, the result is 92 barrels ultimate for each barrel of

initial. Turning then to the cards that are in evidence, the Gulf cards from the geological department, I find that the total initial of these three Knoles wells is 4,076 barrels; and when we figure the ultimate, we have 144 barrels ultimate per barrel of initial on that basis. When we come to the Gulf engineering cards we get still further figures. The total initial of these three wells, as shown on the Gulf engineering cards, is 3,500. When we divide that cumulative production by that figure we get 168 barrels of ultimate production per barrel of initial, the range there being 63 to 168.

I have read the testimony of Mr. Oliver, and, as I recall, he made some estimates which were based on computations showing the number of barrels of initial necessary to pay for the well, or make a profitable well, whichever way he worked it. I have made some computations using each of these figures showing the ultimate per barrel of initial on Exhibit DK. My opinion which I have expressed in my testimony here is not based on these figures, but on my experience over several years. I made these figures to find out how reliable some of the estimates in Desdemona had been. The computation of the profitable well—I based my figures on $2.25 per barrel, after allowing 25 cents for operating costs, and that gives a total cost of operation and drilling of $43,000 for a 22,000-barrel well. I am talking about a well that might make 22,000-barrel total. Assuming that the number of barrels is to be divided by these various figures in Exhibit DK, showing the barrels produced per barrel initial, the ultimate per barrel of initial on Petitioner's Exhibit No. 74 being 63 barrels per barrel of initial, or rather that is the result of my computation from those figures which they give in 74. That would mean that if we accepted their figure as correct and final, it will take a 365-barrel well to produce approximately 22,000 barrels and pay back the cost of drilling and operation. If we take the other figure on Petitioner's Exhibit No. 63,

the computation shows it will only take a 239-barrel well; and if we take the Gulf geological cards, the computation shows a 153-barrel well to pay for itself; and the engineering cards, a 135-barrel well. We assume that the price of oil is $2, as I believe the petitioners did; we get for those figures a 397-barrel well, a 272-barrel well, a 174-barrel well, and a 149-barrel well. The only conclusion that can be drawn from that is that the value of the initials in determining the ultimate production is practically nil.

Petitioner's Exhibit No. 73 is a series of diagrams which purport to show on the vertical scale the number of barrels per day certain wells produced; and on the horizontal scale, the months in which this production was obtained. This includes Knoles No. 1, Magnolia-Duke No. 1, Tex-Penn Duke No. 1 and a number of smaller wells that seem to have come in very shortly before the end of July. Taking Knoles No. 1 for the month of December, it shows that this well averaged 114 barrels per day. During January, according to this diagram, the well had an average production per day of 2148 barrels; during February, 2,002 barrels; March, 2,009; April, 2,149; May, 1,417; June, 676, and July, 448. At this rate of 2,000 barrels per day production, I think that well would pay for itself in just about a week.

It is very hard to draw a satisfactory conclusion from the fact that that well produced 2,000 barrels for over four months and then rapidly declined. The rapid decline may be due to various things. At any rate, the well has produced enough oil to make a substantial sum of money even if it never produced again. I see nothing in this that would justify the assumption it would not produce further, but I do not know from this record of production and this diagram what was causing the rapid rate of decline. I see no reason to draw a conclusion from those facts that the rapid decline after such a long period of high production would necessarily be attributed to a failure of the supply of oil.

I am familiar with the pipe-line runs as mentioned in the hypothetical question and shown on the primary Exhibit AU and the tabulation CP. It is obvious from this tabulation that there was a rapid increase in the production of the pool. I considered that as a factor indicating that the pool was increasing in production. There must have been continuing interest in the drilling of wells. There must have been a number of completions in these later months, like June, for example, which has about 140,000, nearly 140,000 more barrels than May. In May we have a total of 259,254 barrels; June, 396,349; July, 740,574. It seems to me from those figures that the interest in this pool must be pretty great to result in the adding of new production at such a rate. The fact that the records show between July 6th and July 24th there were twelve wells completed with an initial production of from 800 to 3500 barrels is one likely to influence activity in the field and to sustain or even increase the interest on the part of these buyers and operators. It would not affect my opinion very greatly in regard to the fair market value of the Duke-Knoles leases. It might put the market value beyond the reach of what I would think I would be justified in paying. I was familiar with the prices for oil in 1919, and it was my judgment that there would be an increase in price, and that judgment was confirmed by discussions with my associates and others that I met in the oil business. The gas had a value, in addition to fuel for drilling of other wells, for the manufacture of natural gasoline, or what we call casing-head gasoline, which would increase the market value of the Duke-Knoles leases. Mr. Moody's deposition that the Cosden Carruth blew in at 90,000,000 cubic feet initially would indicate to me that the gas pressure was probably high at that time. If properly conserved, the gas will increase the life of the productivity of the well. The chief conservation is to keep the wells tightly closed that are not in use and

to produce oil at such a rate that you would get the maximum efficiency from the gas.

I do not know Mr. Benedum who is the petitioner in this appeal personally but have known of him for about twenty years. I know what the reputation of Mr. M. L. Benedum was in 1919 and prior to August 1st as an oil operator. His reputation with his partner, I believe Benedum & Trees was the firm name, was that of successful operators on a large scale. I might mention some of the items that I knew of. There was the development and sale of a large property in Louisiana to Standard Oil Company, which took place several years prior to 1919. There was the successful launching of the Tropical Oil Company in South America, and this discovery here was in itself a notable item.

Without objection there were received in evidence Respondent's Exhibits marked for identification as DH, DI, DJ and DK (see exhibits DH, DI and DJ in folder of Unprinted Exhibits; see Exhibit DK in Volume of Exhibits).

*Cross-examination.*

I was first consulted in regard to this case some time about six months ago. I think I was employed in September or October. I presume I should say that I hope that I am a qualified expert. I have known the witness Woodruff about thirty years. I learned that he had been employed as an expert by the respondent in this case some time after he was employed, but I cannot give you the exact date. I presume it must have been two or three weeks before this trial began. I could not say when I first conferred with him about the testimony I was going to give in this trial. We made a trip down to Desdemona and I think we discussed the methods of arriving at the value of the properties at the date of valuation. We made a trip to

Desdemona together by prearrangement some time in October. I do not recall that we held any particular conference. We discussed informally the ways in arriving at a valuation on the trip. I am not sure whether we did before or not. I could not say if this was Mr. Woodruff's first trip to the Desdemona property. It was my first trip there. Mr. Woodruff has an office on the floor just below me and we see one another frequently, but whether we discussed this case once, twice or three or four times, I could not say. I do not believe I would say that we had a number of consultations; an informal discussion of points involved between professional men, not necessarily consultations. There was no agreement between us as to what we were going to testify to or how we were going to arrive at valuations. I believe that I discovered that Mr. Woodruff's valuation would be identically the same as mine since I came to Washington, and I did not at that time even then know it would be identically the same. In fact, I did not know it until I heard it. I did not know the details of Mr. Woodruff's testimony until he went on the witness stand. I knew the general plan of approach which anybody would have to use to get at that. I think I could guess at the figure he had reached if he followed the line of reasoning that I did, but I did not by any means know what line of reasoning he would follow. Answering your specific question as to whether or not I knew before he and I appeared here to testify what figure he was going to name as his estimate of the fair market value of this property, I think he mentioned that a day or two before he testified. I doubt if he knew what figure I was going to use until he heard it this morning. I do not recall having told him in spite of the proximity of our offices. In spite of the number of times the subject arose between us, I can only repeat that I do not recall having told him. That is the answer and the only answer. I do not recall that I told him the method by which I was going

to approach my valuation, and if I did, I do not recall when. I am not prepared to say that I did not tell him the method by which I was going to proceed. I did not particularly conceal the method I was going to use. In candor, I do not know whether I told him or not, that is why I am telling you that. I cannot say whether or not he told me what his method of approach was going to be. There was no formal discussion of this. You need not assume that we have presented identical computations based on identical factors as a mere matter of coincidence. I did not conceal my method; I do not recall having discussed it with him. I made my estimate entirely independent of his. It does not seem to me that there can be much difference of opinion using the factors that we have. The factors are there for us and the facts are there for us. I think those are the factors that any valuation should be made on. I think those factors should be taken into account. I have no desire to try to tell you that it was a coincidence that Mr. Woodruff and myself used the same factors and achieve the same results. You asked me a question about conferences and things of that sort that I do not recall, and I told you so. The final computation of Exhibit DJ was completed a couple of days ago. I may have shown it to him or I might have given him a copy of it, I do not know. I do not recall whether within two days' time from this date I gave Mr. Woodruff a copy of this computation. If you want to know whether I did, perhaps his memory is better on that than mine. I said perhaps it was. There is no reason I know of why it is. He gave me a copy of some computations of his some time during the time we have been in Washington. Whether those are the computations he used finally, I cannot say, because I have not examined them carefully. I heard his testimony yesterday. I do not remember when he gave them to me. I am not keeping a diary of those things since I came to Washington. Some people charge their

minds with things of that kind and some do not. I do not charge my mind with recollection of those things. I saw some of Mr. Woodruff's computations before he went on the witness stand. Whether they were the ones he finally used or not, I could not say. I could not say whether they led to the same results he announced on the witness stand. Some of the earlier computations were made on the basis of pipe lines, I believe. I probably saw those. His final figures, I believe he said, were made on these two exhibits which I used, Petitioner's Exhibits Nos. 30 and 73. As a matter of fact, a couple of days ago I made my computations on that basis because the hypothetical question assumed those things. I do not recall that he told me that he made his computations on that basis. I have been in attendance here, I think, for about three weeks. Mr. Woodruff has been here the same length of time. I do not recall that we had any particular conference. We discussed these questions naturally with counsel; in some cases we were both present; in other cases one of us would be present, the other not. There is no particular coincidence that both of us found the prospective profit and the prospective value of the oil ground and divided that value by 50 per cent. I have followed that practice for years and I presume that Mr. Woodruff has also. I cannot give you dates on when I first learned he was following that practice in this case. I assumed he would follow a good practice and that is to my mind a very good practice. I do not recall whether I knew before I came to Washington that that method was going to be followed by him. I learned that before he went on the witness stand. I do not recall whether I told him that I was going to follow that practice. I cannot say "yes" or "no" to that question because I do not know whether I told him that particular thing or not. That is a well-established practice among a number of us in the Mid-Continent Field. I have no recollection in detail on those

subjects. We discussed this case; there is no secrecy about that. We discussed methods of making valuations, but just what date we did it and how often, I do not know. I do not see that it is material. I think, when the question comes up of what a man does with something, he can judge the materiality of it, whether a witness or not. I am perfectly willing to tell you anything that I can tell you and be accurate on.

Mr. Woodruff and I agree that the way to value oil properties is to ascertain its probable petroleum content, and probably agree with a number of other people on it. That is the method I have used. I think I would employ that method in advising clients. I have done so in the past. That is the method which I am undertaking to employ in my computation DJ. I started by taking the production prior to August 1st, 1919, of six wells on the Tex-Penn property and one well on the Magnolia-Duke, or seven wells in all. I divided the total production by the number of wells in order to strike an average, and the accuracy or fairness of that average runs the whole way through my computation even to the ultimate value. If that average is unfair in any particular or an improper assumption, I would say it affected my conclusion.

I did observe that of the aggregate total of 421,140 barrels on the Tex-Penn property 339,000 odd barels had been produced by a single well. I see no reason why the average would not be fair just because one is larger than the other. I think that if I had six wells producing a thousand barrels each and one well producing the entire remainder that you could add this together for the purpose of striking an average. If one man could lift eighty pounds and six boys could lift ten pounds each, or 140 pounds in all, I think it would be fair to say that you could divide the total by seven and the average lifting power of those particular male animals would be found, but not necessarily of all male animals. To attempt to apply that to male

animals in general would depend on whether those were the average of all the male animals. I do not know about that. I do not know that it would affect the question if the male animals were still to be born.

*By Mr. Davis.*

Q. The last question, Mr. Matson, was: "How many wells had been drilled on the Tex-Penn property up to August 1, 1919?" and you were proceeding to make a count. A. As I recall, you suggested I use Petitioner's Exhibit 30 for the count. I found on that exhibit that there are twelve wells bearing date of completion prior to August 1, 1919.

Q. If you used all twelve wells in making up your average, what would your average be? A. I have not figured that. I presume it would be half of what I would obtain if I had used the six wells.

Q. Will you make up that figure and tell us if all the wells that had been drilled were included what the average would be? A. It will take some little time to make that computation. I usually do that by a machine rather than doing this thing myself. Because of the fact I have added in here the one well from the Magnolia in these figures.

Q. Very well, include that. That would make thirteen. A. That would make thirteen. I can make the computation for you, but I would like to say in advance that I could not guarantee its accuracy.

Q. All you have to do is to divide 513,623 by 13, is it not? A. That is it, but I still would not guarantee the accuracy of the figures. I get for the average 39,432 and a fraction barrels.

Q. Well, if you added to the thirteen wells that have been drilled on the Tex-Penn and the Magnolia-Duke leases those wells which were drilled as immediate offsets around them, how many would you have? A. I would have to count those.

Q. Well, count those and tell me. A. Do you wish any particular distance?

Q. I mean immediate offsets. That is the easiest, I think. A. May I ask one further question in regard to that? Immediate offsets might be either direct or diagonal. Take, for example, these two wells here.

Q. I mean those wells which are drilled within one location of the borders of the Tex-Penn tract. A. As I count them, they would be eighteen additional wells.

Q. Making a total of thirty-one in all? A. Thirty-one in all.

Q. Now, if you were trying to predict the future yield of the wells on the Tex-Penn tract by a system of averages, why would it not be fair to include the whole thirty-one in your division? A. For the simple reason I do not have the figures of production for any except the six that I used on the Duke-Knoles leases and the one on the Magnolia. I could not obtain an average without having a total production on each of those wells.

Q. If you had the total production of each of those wells, you would carry that into your average? A. I would not.

Q. Why would not those wells have as much influence on the prediction of the average production of the future wells as any others? A. I regarded those wells as being edge wells of the pool. Some lie outside of the area that I have rejected as not being good.

Q. Your first fact is the total oil produced on the Tex-Penn leases and from that you build up an average which you project into the future. Of course, the future recovery of that average per well is an assumption on your part, is it not? A. I do not recall having added any future recovery for these six wells. I took the——

Q. You misunderstood me. I say that the average of these seven wells you treat as the future recovery to be expected from subsequent wells drilled on the Tex-Penn

tract. A. I did not carry the computation on in exactly that way. I computed the average expectation per acre and treated the number of acres in the proven area.

Q. And you deduced your expectation per acre from that average per well, did you not? A. I did.

Q. Now, I ask you whether that is an assumption that the average per well will be that much in the future? A. No, sir, because I did not consider it necessary to drill that many wells. My average per well would be different. I thought about the number of wells that would be required to drill one well to twenty acres would be sufficient to drain the property. It might take a little longer. That is the Tex-Penn property.

Q. Do I understand there does not underlie your entire computation here the assumption or hypothesis or theory, whatever you want to use, that the average to be taken from each subsequent well will be 73,375 barrels? A. No. I made no such assumption.

Q. You made no such assumption? A. No, sir.

Q. I am trying, if I can, to dissect this computation of yours and to take from it those things which are actual facts and those things which are estimates on your part. I now ask you, having taken the initial fact of the number of barrels produced and the number of wells that are carried into your average, whether you did or did not indulge in the assumption that that average will prevail in the future wells drilled on this tract? A. I did not make that assumption.

Q. You did not make that assumption? A. No, sir.

Q. Now, the next proposition is that each well will drain ten acres. A. Not each well, but each well so far has drained about that. I think it would have been less, but I made it liberal, to be reasonable.

Q. Well, of course, the amount of acreage that a well would drain depends upon the character of the strata from which the oil is being produced, does it not? A. In part.

Q. What else? A. The time.

Q. The time that the well is in operation? A. Yes, sir.

Q. The character of the strata from which it is drawn? A. Yes, sir.

Q. If the strata is uneven— A. There would be other factors that might enter into the question.

Q. What others? A. For instance, pressure, and the volume of gas.

Q. Well, among the principal factors would be the density or the porosity of the strata from which the well was drawing? A. That would be an important factor.

Q. If you have a strata which is of the irregular porosity and density, then it becomes increasingly difficult, I take it, to predict what area the well will deplete or draw from, is that true? A. That might be true.

Q. If you have a lenticular strata which is porous and thick at one place and thin and dense at another, it is very difficult to approach with anything like an accurate propheey of what the area is which the well will draw from? A. Again the time element is an important factor there.

Q. I am trying to draw your attention to the element of porosity first of all. A. Yes, that would increase the difficulty.

Q. Is the proposition that each subsequent well will draw from ten acres a matter of fact in your equation, or a matter of hypothesis? A. I did not make that hypothesis. I did not assume it as a fact.

Q. You assumed it as a fact? A. I did not assume it as a fact.

Q. In what character does it get into your equation? A. It gets in there by computing the number of wells or the number of acres that I believed might have been drained by this well.

Q. And it is a necessary factor in your equation, is it not? A. It is a necessary factor.

Q. Now, I ask you whether it is in your equation as a fact, established by evidence, or as a hypothesis? A. If by hypothesis is meant a deduction from my experience and observation, I would say it was a hypothesis.

Q. Now, I ask you if there is any fact proven here with reference to the Tex-Penn leases which establishes that hypothesis? A. You have the testimony of Mr. Woodruff in regard to that subject.

Q. In what respect does the testimony of Mr. Woodruff on that subject differ from yours? A. Probably very little.

Q. Was Mr. Woodruff's a hypothesis or a fact? A. I think he should answer that question.

Q. You have read or heard his testimony, have you not? A. I heard his testimony and assumed it was a hypothesis, if we define the word hypothesis as I did.

Q. It is the same thing with you? A. Yes, sir.

Q. I ask you what basis of fact there is in this evidence to support that hypothesis. A. I did not attempt to put it on the basis of fact in this evidence, and I do not know of anything other than Mr. Woodruff's testimony. I have not, you understand, read all of the testimony.

Q. On that you support Mr. Woodruff, and Mr. Woodruff supports you? A. I think we agree approximately.

Q. Neither one of you can point to any proven fact in your support? A. We could point to the general practice of spacing wells at that time.

Q. Of course, you are dealing here with the practice of spacing wells. You are dealing with the sub-surface efficiency of the wells after they are spaced. Of course, it is apparent here that you have predicated your computation upon this ten-acre drainage. There can be no doubt about that, can there? A. I think not.

Q. Very well. We will pass to something else in that equation. The next factor in your equation is that the proven area is 2529 acres? A. Yes, sir.

Q. I will ask you whether that is a fact or a hypothesis. A. That is my conclusion.

Q. Is it a conclusion of fact, or is it a hypothesis? If you do not like the word "hypothesis," I will use the word "assumption" or I will use the word "theory," whichever one you want. A. I think I would prefer the word "assumption."

Q. Very well. Is it a fact or is it an assumption? A. It is an assumption.

Q. That is an assumption. Now we come to another element in your equation, the price of oil, $2.25 per barrel.

Another element in my equation is the price of oil, $2.25 per barrel, as of the 1st day of August, 1919; that is a fact. There is the assumption perhaps that that will be the average price throughout the drainage life of the well, and it is not possible of proof as of the date of valuation.

The number of wells which are to be drilled, namely, 125, is what I assumed would be necessary for the drainage of my proven area. I settled on that number because I believe that was sufficiently close spacing. I do not envisage any particular location for those wells. Those wells would be drilled in accordance with experience as the drilling progresses, except a certain number may be required to protect against offsets. I suggest that a solid block like this is less exposed to the necessity of drilling offset wells than isolated leases. It certainly is true that the duty to drill offsets prevails inside of the block as from lease to lease. I do not want to be understood as saying that the mere fact that this is a consolidated block relieves the operator from drilling offset wells inside as well as on his out boundary, but it does give the operator a chance to control the offsets. I did not make any computation of the number of offset wells that would be required inside the block. That is under the control of the operator himself. I think it is unnecessary to take that factor into consideration in determining my number of 125. It is an

assumption that the wells could be put down there on the average of one well to every twenty acres.

I criticized the cost of the well which I took as $37,500. I read the testimony of the witness Sinclair, that he drilled for the Hogg Creek-Magnolia at an average cost of $37,629.50 for thirty-nine wells. I think that the average of nine wells drilled by Boyer for the Sun Company of $31,135 is a truer average because of the fact that the results obtained by the Sun Oil Company are far more reasonable than those obtained by the Magnolia. I assume that the Magnolia wells were drilled by the company. The testimony, I believe, does not clarify that point, but it is clear from Mr. Boyer's testimony that the Sun Oil Company drilled these wells by contract and the contractor usually arranges to make a profit on his price. Now, the question of whether the Magnolia, drilling by company tools, could drill as cheap as by contract is one that might come in. I have seen that question raised in connection with our own operations. It depends upon how skillful the production superintendent is whether it would be fair to assume that the owner or operator of the Tex-Penn would contract his wells instead of drilling them himself and thereby save money. I would not necessarily make a contract myself but I would get a new superintendent if the price ran as high as the Magnolia wells.

I do not recall that I was employed at any time directly by the Gulf Production Company. There are a number of subsidiaries of the Gulf Oil Corporation and at various times I was assigned to work in the different subsidiaries and I do not recall that I was assigned to do any work for the Gulf Production Company. I regard the company as a reasonably prudent and careful operator. The shortage of pipe was very noticeable in 1920 and that made the cost of drilling wells in 1920 materially greater than the cost of drilling them in 1919. If it should appear that the twenty-one wells drilled by the Gulf Production Company

in Eastland County in the latter part of 1919 or 1920, averaged a cost of $46,813 per well, that would not modify my impression as to the accuracy of the $37,500 assumption. The Gulf Production Company had a large territory. If they were drilling in Eastland County, they may have drilled some wells to unusual depths and at other unusual costs. I have seen the name on the map of the Prater-Grice well in the Desdemona Field. It does not affect my estimate of the reasonable cost of those wells to have you tell me that three wells drilled on that lease cost from $42,000 to $50,000 each. What the Gulf Production Company put into their well costs may be the cost of the well and it may be the cost of the well plus a lot of other items that they assumed should be charged to the well. I would object to making any estimate based on the drilling costs of twenty-one wells drilled by the Gulf Production Company in Eastland County for use in the Desdemona Field. Here is a well that was drilled 3397 feet, the next well was 2690, 2808, 2948, 3240, 3941, 3455, 3561, 3557, 3547, 3554, 2865, 3740, 2830, 3061, 3045, 3697, 3453, and so forth. The W. R. Carruth well is 2690. I believe that is one of the Desdemona wells. The survey is not here. There is another Carruth well which is 2808, and there is another one which is 2948. The Kivitt wells range from 2941 to 3475. Prater-Grice wells run 2865 and 2740. They were in the Desdemona Field. It is apparent that the depth of drilling on a number of these wells is much greater than Desdemona. If you will recall the lime carried a cost in the tabulation of drilling costs, a petitioner's exhibit, of $10 per foot. That increases the cost out of all proportion to the increase in depth. I want to say again that the question of costs here is complicated by the possible assumptions of what should be added to the actual cost of the well by the auditor of the company. These figures would not modify my conclusion that $37,500 was too high a cost for a well.

After passing the question of cost of wells and number of wells in my equation, it is a mere matter of mathematical computation up to the point where I reach an expected value of $27,206,591. Having reached that figure, I cut it in two. I think that is an assumption which is made by practically all men who are dealing in matters of this sort. It is common that there is a level figure of 50 per cent. that is applied in the industry. There are various items of hazard in the industry which are taken care of already there. I have taken care of part of them. I have thrown out about 900 acres in selecting my proven area. I have taken care of part of them when I used $37,500 as the cost of a well, and we took care of the rest of them in this deduction of 50 per cent. and allowing for myself a chance of profit. Throwing out the 900 acres was merely summarizing the factors that we use in taking care of the hazard. That has nothing to do with the 50 per cent. It is 50 per cent. of the prospective production on what I call the proven acreage.

The hazards involved in the rejection of the 50 per cent. are the risk of the wells not being as good as expected and the risk of water intrusion. Those I think are the major features. In this field I heard of no cases of water intrusion, and I think that was not an important factor. However, I have some other assumptions in there, and I considered it conservative to make an allowance here. It might have done as well to have taken 60 per cent. or 40 per cent. My experience and apparently that of other men is that a 50 per cent. allowance is reasonable and we use it for safety sake and include in that what profit we may get. There is uncertainty in that element. I believe the selection of 50 per cent. is based on the combined experience of the industry. I cannot give an illustration of a definite field which proved to be 50 per cent. less than the original computation. We are dealing with probabilities in this world not with certainties. My whole estimate is

one of probabilities. I made no special study to confirm those probabilities by the subsequent history of this property. After I had made my valuation I checked over exhibits and found in one of the petitioner's exhibits some interesting figures. I do not recall them now and I do not recall which exhibit it was, but it is one which I believe was a balance sheet which showed that the actual returns were small. Understand, when I made my valuation and completed it as of August 1st, I did not take this into account and I did not in fact see it until after I had made my valuation. The returns from the sale of oil and gas were small. I do not recall the figures. I checked the cost of the wells from that return and got a very interesting result which gave me a pleasing surprise. It seems their wells cost between $23,000 and $24,000 on the average. The balance sheet was very unsatisfactory reading.

I have seen Petitioner's Exhibit No. 49, but I did not include it in my computations or in any consideration of values because it is data subsequent to the date of valuation. I observed from this exhibit that the total production of oil when my $13,000,000 valuation was made was 288,742.43 barrels. I seem to have a vague recollection of a list of twenty-eight wells somewhere upon your exhibit which were drilled on the tract after August 1st, 1919. Replying to your question that these exhibits make it perfectly apparent that by no possibility could this property have produced $13,000,000 to its owner, I say unless, of course, it had not been thoroughly tested. I cannot say as to that. I did not check how the wells were placed or where they were placed to see. I do not know whether it was thoroughly tested by these twenty-eight wells or not. That is probably doubtful. I doubt whether it was thoroughly tested. The fact that the only activity that was occurring on the property when I was there in 1932, was the pumping of one well that was producing a half barrel per day, and that the owner had deserted the property as

having been thoroughly tested is not exactly the way I would regard that or an oil man would regard it. The question is relative. They drilled twenty-eight wells with very poor success. They had other places to go to drill where they might have a better chance of success. It is a question of judgment whether they would drill more wells here and try to further test this property or go somewhere else.

As a geologist I do not especially make it my business to keep up with the history of the various oil fields. I never did care very much for post-mortems, and apparently the Desdemona Field had reached the state of a thorough going post-mortem. I did not follow the history of that field. I was busy elsewhere. I did not follow it closely, but think that is probably true, that the Desdemona Field played out very rapidly. I am not denying knowledge of it. The wells in the Desdemona Field, especially the large ones, had a rapid decline; but large wells in general have a rapid decline. I do not believe that I would agree that they declined much more rapidly than was usual. The decline of a well is a matter of observation, and, as I said, large wells decline rapidly. I would say that Desdemona had a rapid rate of decline, especially among the large wells. It had a short life, probably, but I was not certain in regard to some of the wells whether they might not be improved by cleaning out and drilling deeper; that an oil man would do. In actual fact, the Desdemona Field proved to be a very short-lived field if we take into account its full history.

I think the same general conclusion could be drawn at Ranger as at Desdemona. The large wells declined rapidly. I have not made a careful study of that. I think they probably did. There were a number of pretty large wells there. I would not say that the Desdemona Field declined even more rapidly than Ranger Field, without qualifying it. I had that average of 241 wells which is

shown in Petitioner's Exhibit No. 69. I would not want to draw a general conclusion. I should think it was probably true. In the Desdemona Field, for example, from Exhibit No. 69, we have some figures which indicate a production of about 54,000 barrels per well. When we turn to the six wells that had been producing, or the seven wells that had been producing, inside of the Duke-Knoles block, they had produced an average of about 73,000 barrels per well. It seems, therefore, that the rate of production may have and probably was faster in Desdemona than in Ranger.

I have heard some of the testimony here since I came. I came here after most of the witnesses for petitioners had testified. I read some of their testimony. I do not recall at the present time any testimony that Desdemona did go down faster than Ranger. It does not at the present time come to my mind that we had such testimony. We may have or may not, but I could not tell you who, if we did have. I would have to have the exhibit to say how much the Transcontinental Oil Company spent in testing the Tex-Penn leases, because I did not make a memorandum of that and I do not have the figures at hand.

Q. Assuming they spent in round figures $800,000 in testing the Tex-Penn leases without any profitable result, is it your judgment as an oil man that they ought to have spent still more? A. I would refer back to the statement I made a while ago, that that again was relative. It depends on the relative prospective results from the drilling.

Q. In the light of the result that had been attained, as shown by these exhibits, is it your judgment as an adviser of oil men that they should have continued to spend money in drilling holes there? A. I would have to know where the holes were, and a lot about the showings that they made, and things of that sort, before I could answer that question. I do not have that information. I would, however,

if I had to deal with it, have looked for more attractive territory.

Q. I imagine you would have abandoned it without looking back over your shoulder? A. If I knew just how those wells were placed and what they showed, I could answer that question. I might have tried another one if it had not satisfied me.

It seems to me that the Petitioner's Exhibit No. 69 checks my conclusions very adequately. Checks them pretty accurately and shows that you might expect about the same result here as at Ranger, perhaps a little more rapid production, but about the same results. They have here 241 wells which had an average production up to the date of compiling the figures of 54,637 barrels. That is the cumulative total to that date.

Q. * * * You thought because there were 241 wells in the Ranger Field which had produced up to July 10, 1919, 54,000 barrels apiece, that that was an indication of what might be expected on the Tex-Penn leases? A. Well, that is not quite as simple to answer as that.

Q. Well, what is it, then? A. If we allow but eight acres per well, or less, over in the Ranger, that gives an average production of about 6830 barrels per acre.

Q. How many acres were there in the Ranger Field? A. I allotted there eight acres per well.

Q. Wait a minute. Answer the question. How many acres were there in the Ranger Field? A. Mr. Davis, it is impracticable to attempt to compute the acreage of any oil field until all the oil wells are drilled and we know where the boundaries of them are.

Q. Then, if you do not know what the acreage and the boundaries of the Ranger Field were, how can you tell how many acres there were to each one of these 241 wells? A. By the spacing.

Q. Do you know what the spacing was? A. I have been through that field a number of times. I think the spacing

there ranged from about 250 to 300 feet from the lines. There were certain areas that were more closely drilled.

Q. What I am asking you for now, I am trying to deduce not a hypothesis but a fact. Do you know as a fact how many acres there were on which these 241 wells were drilled? A. I cannot give you the exact figures because the spacing varied. In addition to my observations of the distribution of wells in the Ranger Field, I scaled the locations off the map to see about what they were allotting per well there, and they ranged from 250 to 300 feet from the lines.

Q. Am I to understand, then, you took the map of the Ranger Field? A. I took a number of individual maps of the different parts of Ranger Field and checked my recollection against that, and that agreed with what I had seen. You understand, when I was in the Ranger territory after the field had been exploited I was not particularly interested in the subject of spacing; therefore, I felt obliged to check it by the actual representations as set out on the maps.

Q. What I am trying to get at, Mr. Matson—you must understand it—is this: Whether your allotment of eight acres to each one of the 241 wells is a hypothesis or whether it is a proven fact? A. Well, it is borne out by the distribution of the wells in relation——

Q. You say it is borne out. Now, I want to know whether you compare the Ranger Field with your estimate of the Tex-Penn Field on the basis of assumptions attributed to the Ranger Field, or whether you took the proven facts, the ascertainable facts, as to the Ranger Field and from those facts built up your confirmation? Do I make it clear? A. I think the spacing of the wells are ascertainable facts.

Q. Did you ascertain them? A. I did ascertain them as far as was practicable in the limited time and the limited amount of material I had to work with.

Q. Of course, that qualification destroys the answer unless you can explain it. A. Not necessarily.

Q. How far was it practical— A. Not necessarily. I think that covers it.

Q. How far was it practicable to ascertain what the actual allotted acreage was in the Ranger Field? A. I do not have a map showing all of these locations. I had maps showing locations of something over a hundred properties in the Ranger Field. If they only averaged one well per property, that would be somewhat less than half the 241; but, as a matter of fact, there were several properties had a number of wells on them, but I cannot say how many wells I used in making this computation.

I believe that there is an estimate of the age of the 241 wells in the Ranger Field on Exhibit 69. I took it into consideration and gave it what weight I thought was necessary. According to Exhibit 69, this would be an average age of one month. I will accept that with very great reservation because of the computations that were used in establishing it. It was an average in flush production, but at that time these wells were only averaging about 309 barrels per day, so that they did not have a very large percentage of their production yet to be delivered. This computation is based on Exhibit 69. The latter days of the Ranger Field would have to take into account not only these wells but any additional wells that might be drilled and the production from all of them. That is what we have from Petitioner's Exhibit No. 69. I have no information as to the relative size of these 241 wells except what is given on Exhibit No. 69. There is nothing trustworthy in Exhibit 69 giving relative size. There are some statements in the text which you did not introduce in evidence. They are suggested, but not statistically. If of these 241 wells 80 per cent. of the output was being produced by twenty wells, I should think you would have something reliable if you took the average production of

the total as a basis for your guidance. Oil properties vary in size; that is a well-known fact. I will accept your figure that 241 wells at eight acres to the well is 1928 acres. As a matter of mathematics, that is 600 acres less than my proven acreage in the Tex-Penn block. I do not suggest that it is the total Ranger Field. I am not taking any of the Ranger Field except what is given in this table. I do not know how many acres it was scattered over; it was scattered.

In determining the future production of a well, or trying to forecast the future production of a well, the rate of decline throughout its history is an important thing. The rate of decline is a time element and production is, of course, to be considered with it. Rate of decline necessarily imports the time element. My starting point in computing my rate of decline depends upon the period used as the basis for the computation. If you are using years as the basis for your computation, you would have the average yield per well per year. In months it would be months. Weeks it would be weeks. If it is days, it would be per day. The result you would get would vary considerably from the final result if you used the shorter period. The starting point for the period would be when the well began producing. If your rate is allocated to the life history of the well, it must begin when the life history begins. The life history begins when the well begins producing. It begins producing when the first oil comes from the well. I would not say that it was entirely correct that the life history of a well begins with the initial flow and its initial flow as that term is understood in the industry is the first twenty-four hours production.

The initial production is usually an estimate. If we get the initial flow, that would be something you could measure. Probably on most wells the life history of a well is kept in the industry on the basis of its initial flow, the amount which is produced in the first twenty-four

hours of its life. Unfortunately, they do not have accurate figures the first twenty-four hours. The practice intended is to take into account the production from the lease rather than from the well. That used to be taken every two weeks from the pipe line run. The history of individual wells is not kept separately in the industry. I wish it was and a great many other people wish it was, but the history is not kept of the individual wells.

I have seen the sand cards that have been introduced in evidence and produced by the Gulf Production Company. Those sand cards were for the use of the officials of the company that had them gathered. They wanted to know whether the wells that were being drilled were large or small. They were an estimate of production and probably in many or in most instances not even an actual measurement. The operator of an oil field rarely keeps a history of the individual wells. That is one of the things that has made it difficult to estimate the future. I have recommended to my employers that they keep such records, but remember it takes additional tankage to keep production or to keep track of the individual wells when there is more than one well on the lease and they will not go to the additional expense. I have never had occasion to make a specific recommendation that they take the initial flow of the well for the first twenty-four hours and record it, but I would be glad to have that figure and wish they would do it. I am afraid I would not get correct results either way if I wanted to ascertain the rate of increase or decline of a well by taking the initial flow for the first twenty-four hours or the peak flow two or three weeks later and compute from the peak down to the end of my period because I could not probably use the earlier figure. I might take peak. If they had accurate figures on both, I think it would be a question that I would weigh. First of all, I would want to know why the peak and why it increased. Perhaps that well should have been drilled

deeper. If it were drilled deeper, I think I would take the peak, but I would be uncertain how accurate my results would be because some of the head has already gone from that well. That is another uncertainty of the oil business. In choosing between initial figures kept by the owner of the well and those which have been kept by other persons on reports from their scouts, I would have to know the individuals. I have seen so much of the owners' records that I might rely more on the third party, who was not interested. I know I would in some instances. In other instances I would rely on the company itself. I do not think there is any safe presumption in favor of the owner as against the stranger.

Assuming that the testimony shows that the figure of 9430 initial barrels on the G. W. Knoles three wells taken from Petitioner's Exhibit No. 74 is from the records of Transcontinental Oil Company, if I were called on to choose or accept it in preference to the records kept by the Gulf Production Company geological and engineering department cards I would prefer the Gulf figures. I have made no inquiries in regard to why there is a difference between that figure and the one of 6430 barrels taken from Petitioner's Exhibit No. 63. I could guess at it, but I do not believe that would be particularly valuable. If after the 6430 figure had been computed one of the wells had been drilled deeper and had increased to a peak, I would include that peak in the initial for the purpose of ascertaining the decline. However, I checked that question of peak as near as I could from another exhibit here. This Exhibit 73 did not unfortunately have initial. We have there, I believe, the daily average, and the highest figure goes a little above 2,000 barrels. I think that is rather low production for a 9,000 barrel well. That would show a very rapidly declining well.

I have read the deposition of the witness Moody before I testified. I was interested particularly in the possibilities

of gas wells becoming oil wells and read the testimony with that thought in mind. I knew that the testimony related to the Cosden-Carruth lease and located the lease in reference to the Tex-Penn leases on the map. I do not recall the figures that the total investment made on the lease was $301,000, the total revenue $249,000, and that the total loss incurred was $51,000. I was not impressed by them because what it cost the Cosden Company to drill the wells on twenty acres is no fair guide to what it would cost to operate that lease properly. I declined to be impressed by that in estimating the probable revenue to be derived from the Tex-Penn leases. I do not recall the figures in his testimony that the production from that lease on July 2 was 3595 barrels and the production on January 2nd, six months later, was 30 barrels. I may have read it. I was not impressed by that in estimating my future production from the Tex-Penn leases. They drilled three holes on twenty acres, which is entirely too close spacing. The fact that they drilled three wells had something to do with the decline from 3595 barrels to 30. If they had been more prudent, they would have had a lower rate of decline. They might not have gotten quite as much oil, but the rate of decline would not be as high.

*Examination by Member Van Fossan.*

When there is both drilling and production in a given territory, the method or formula generally used by oil men in predicting the future production depends upon the length of time that the wells have been producing. If they have been producing long enough to give a considerable part of their history and their production has been reasonably uniform in rate, we try then to draw a decline curve of that production and from that estimate what the future will be. That is the usual method. It is a matter of mathematics, largely, rather than the application of

geology. Of course, geological information helps to interpret the irregularities of production and things of that sort. I do not know of any other methods employed in estimating future production and future values that are not modifications of that method. We sometimes set it up—in several cases, instead of barrels for a unit of time we set it up in percentages for the unit of time; but it is set up from the production curve, if it is properly made.

I employed as a factor in this case the assumption that each well would drain ten acres. This is interpreted as the average of the acreage drained, some draining five acres and some, say, fifteen acres, and the average, also, of the amount produced by the wells, some producing, say, 1,000 barrels and others, for example, 2,000 barrels. It was intended to be liberal. When I speak of pools of oil, this always refers to the porous strata from which the oil may be produced. I do not know of any instance where there was a solid body of oil. It is always a porous formation. I should assume that one not a geologist would arrive at substantially the same result in applying this formula that I have employed in this case if given the same factors to assume. Of course, we have to give the geology of the outline and what we regard as proven territory, but aside from that the balance of it ought to be something that any well-informed man could judge.

*Redirect examination.*

I used seven wells instead of thirteen wells in my estimates here because there were only seven wells in that area of the block that had actually produced oil prior to the date of valuation, according to the statistics that I have. Those seven wells were within what I considered as proven territory. I do not recall just how many wells there were within the proven territory offhand. I can examine your map and approximate it. There are eight

wells which from the symbols indicate that they were oil wells. There are four gas wells indicated here. The record of one of these oil wells indicates it was a gas well and the record on the map indicates it was an oil well. I do not know which it was. It had not produced prior to the date of valuation.

I excluded from my consideration these offset wells because I did not regard them as indicating anything of importance in connection with this valuation except the fact that they looked like edge wells for the oil pool. Some of them are definitely separated from the proven territory by that strip of territory which I have indicated. I had in mind in making my estimate of the proved area the geological relation of the territory, the relations to the dry holes and the producing wells. An operator who had a large block of leases could control the location of the offset wells within that block by the locations he made on the leases. If he did not want to drill a lease that adjoined on the north, he could keep away from that line far enough so that he would not be charged with having an offset there. He is free to space his wells as he chooses, outside of protecting those lines that are adjoining leases held by other parties. It is rather difficult to say how far an operator would have to keep away from the boundary of the other lease in order not to be required to offset a well on a single lease, but he would need to stay away more than 300 feet, probably considerably more. A 300-feet location is approximately one well to ten acres. I suggested one well to twenty acres, which would keep him considerably further away.

"To put the well on production" means to start producing oil from it. After a well is completed, it is cleaned out and sometimes allowed to flow to be sure that it is free from sediment, and then it is started on production. Then they turn it into the tanks and produce oil. We seldom use the term "initial flow." We use the term

"initial production." That is easy to define. The only trouble is that it does not usually fit the results we get. "Initial production" ought to mean the production of the first twenty-four hours. Some of us think we ought to let a well flow a little while to get the accumulated oil out and the head off before we begin measuring. Some think you ought to take the flow from the initial moment. Unfortunately, the initial productions are not obtained that way very often. I wish they were. I think it would fit my idea to define the term "initial flow" by the amount of oil that is conserved in the first twenty-four hours after the well is put on production. The terms "initial flow" and "initial production" are not synonymous. I have not meant to say "initial flow" with that significance. We generally speak of "initial production," which is commonly an estimate from our own wells. We get the actual production from the gauges and the pipe line runs. The primary basis in respect to production for my estimate of the value for these properties is the actual production. The owners' records as shown by the pipe line runs are the best guide to what the well has done.

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LOUIS RAVICZ, a witness called on behalf of respondent, was duly sworn and testified as follows:

*Direct examination.*

My name is Louis Ravicz; my business address is care of Hayden, Stone & Company, 25 Broad Street, New York. My present occupation is petroleum engineer and geologist for Hayden, Stone & Company; the bulk of my work has been done for this firm and for firms with which they have business relations. These are banking firms and firms like

the Rock Island Railroad and New York Trust Company. I am not here as a representative of Hayden, Stone & Company.

I took an Engineer of Mining degree at the University of Minnesota in 1914 and obtained a Master of Science degree from the same university in 1915. I took one year's post-graduate work, specializing in geology, at Columbia University. This I finished in the spring of 1916.

My first experience in the oil business was in the summer of 1914, when I spent three or four months with two petroleum geologists making a survey of the lands owned by the Canadian Pacific Railway in Alberta, Canada. My next employment in the oil industry was in the latter part of 1916. I was employed as a geologist by Cosden Oil & Gas Company in general geological work in connection with explorations for oil or gas. The work consisted principally of working out geological structures for the purpose of guiding the selection of sites for test wells or the selection of areas in which the company was advised to purchase acreage.

As to the purchases made by the Cosden Oil & Gas Company in Wyoming, we had a representative of the land department right with us; in Oklahoma, my work there, my reports and maps, went into the office for the use of the land department or for the use of the officials. I presume the buying for that company was done by its officials with the co-operation of the land department, or by the land department under the supervision of the officials. My work with Cosden took me principally into Wyoming and Oklahoma; I did some work in South Dakota and also in Montana. I don't think I did any work in Kansas for Cosden. I did not do any work in Texas for Cosden.

I left the Cosden Oil & Gas Company and my next employment was with the Carter Oil Company, a producing oil subsidiary of the Standard Oil of New Jersey. My duties were practically the same as with Cosden. My work

took me principally into the Rocky Mountain States of Wyoming, Colorado, New Mexico and Montana. My relations with the land department of the Carter Oil Company were practically the same as they had been with the land department of Cosden.

After I left the Carter Oil Company, I spent a short time in the army, until early in 1919. My next employment was with Hayden, Stone & Company. I am still with them. They are members of the New York Stock Exchange. I think the firm is regarded as one of the substantial houses in Wall Street.

The business of that firm is a brokerage business in securities and the investment banking business, which includes the formation of syndicates for underwriting and public offering of issues of securities. The firm also takes participation in syndicates formed by others. In connection with the origination of securities and with the syndicate participation by Hayden, Stone & Company, my duties are to appraise properties of oil corporations, to study past earnings and the present and future operation of oil companies, to estimate the value of securities to be purchased or underwritten, based on the above factors and any other factors I might use, and my duties include the studies and conclusions as to the soundness of the corporations and of the securities from a business standpoint. I do not, however, have the final say on the action of the firm. My duties are as an adviser.

I make recommendations to the firm in regard to underwriting securities. I should say they generally have been followed in the past. These recommendations cover only those securities of companies engaged in the oil industry or the natural gas industry.

A few of the oil enterprises I have investigated are the Panhandle Oil & Refining Company, the White Oil Corporation, the Livingstone Oil Corporation, the Industrial Oil & Gas Company, the Skelly Oil Company, the Hogg

Creek Oil Company, the Woodley Petroleum Company, Rozier & Pendleton, American Oil Engineering Corporation, Warner Quinlan Company, Invincible Oil Corporation, Derby Oil & Refining Company, Home Oil Refining Company, the Valveline Oil Corporation, the Paragon Refining Company, the General Petroleum Company, the Union Oil Company of Delaware and the Richfield Oil Company of California.

My investigations of oil companies and oil enterprises took me into Ranger and Desdemona and adjacent oil fields in the year 1919. In 1919 I made investigations in Texas of the Hogg Creek Oil Company, the Panhandle Producing & Refining Company, the White Oil Company, the American Oil Engineering Company, the Home Oil & Refining Company.

In connection with my investigation of the Hogg Creek Oil Company, I investigated the properties shown on map marked KK-1. As nearly as I can recall, I made this investigation the latter part of September, 1919. I had visited the Desdemona Field at least once prior to that date, I think in the early part of April, 1919. This visit was made for the purpose of surveying the entire Eastland, Stephens and Comanche Counties oil area to determine the feasibility of promoting an engineering company to undertake the drilling of wells and engineering work for others and to assist in the financing of such work. That company was formed under the name of the American Oil Engineering Corporation. I recall about five visits to the Ranger-Desdemona area between April and about November, 1919. The general purpose of my investigation was to determine the value of the properties owned by various companies operating in this area with the view to ascertaining the advisability of financing such operations—that is, the underwriting and distribution of securities to provide the companies with the capital required by them.

Mr. Hayden is one of the trustees of the New York Trust Company and the trust company has called on me a number of times regarding the advisability of making loans to certain oil companies.

The right of way of the Rock Island Railroad in Oklahoma, Texas and Arkansas passes through various oil districts. Mr. Hayden is chairman of Rock Island and I was consulted by the railroad as to the advisability of making leases on railroad property to various applicants and the terms of such leases, such as bonus payments and royalties.

I am a member of the American Institute of Mining and Metallurgical Engineers.

A contour map of the Duke-Knoles leases was then offered in evidence and marked Respondent's Exhibit DL for Identification.*

This map was prepared by me with the help of one other man. His name is Mr. Kent. I presume he is with the Bureau. He was working under my direction in the making of that map. I placed the contour lines on the map. I had not intended to offer the map; it is just my work sheet.

Q. * * * Mr. Ravicz, I am about to put a hypothetical question to you regarding the fair market value on August 1, 1919, of the 3,479 acres of leases in Eastland, Comanche and Erath Counties, which are colored in green on Respondent's Exhibit AS and which have been referred to during this trial as the Tex-Penn, Duke-Knoles leases. Before I ask you that question, I want to ask you whether you have examined the exhibits that have been put in evidence in this case? A. Yes, sir, I have gone over the exhibits.

Q. Now, you may assume, Mr. Ravicz, that the following facts are correct:

*Later admitted in evidence. See p. 1680, and Folder of Unprinted Exhibits.

First, that the Tex-Penn, Duke-Knoles leases consisted of approximately 3,479 acres located in Comanche, Eastland and Erath Counties, Texas; that the location and acreage of these leases, the locations of the wells, the dates of completion on the Duke-Knoles, Tex-Penn leases, and the location, the date of completion and estimates of the initial production of all wells in the Desdemona Field are shown with substantial accuracy on Respondent's Exhibit AS, which is the map.

Secondly, that Petitioner's Exhibit 30 shows, as to the Tex-Penn, Duke-Knoles leases, the name and number of wells drilled, the completion date of each well, the total production of oil from the oil wells of this group to August 1, 1919, and the total monthly production from each oil well on these leases, and the monthly production of each well on these leases to the end of July, 1919.

Third, you may assume that Petitioner's Exhibit No. 73 correctly shows the production of the Magnolia-Hogg Creek No. 1 well on the J. N. Duke lease, by months, to August 1, 1919.

Fourth, you may assume that Respondent's Exhibits AR and CT show the records of the Gulf Production Company as to wells completed in the Desdemona Field prior to August 1, 1919. Those are the sand cards, engineering and geological.

You may assume, fifth, Mr. Ravicz, that Petitioner's Exhibits 68 and 69 show 241 wells in Eastland, Stephens, Comanche and Erath Counties, produced 13,167,495 barrels of oil prior to July 16, 1919, and were then producing at the rate of 74,604 barrels of oil daily.

You may assume, sixth, that the Respondent's Exhibits CS and AS show that sixteen wells on the lease, in which the Hogg Creek Oil Company had a one-half interest at August 1, 1919, delivered 828,343 barrels of oil to the end of July, 1919, equal to 51,770 barrels per well, and an average combined daily delivery per well for the sixteen

wells of 18,889 barrels in the month of July, 1919, or 609 barrels per well per day in that month.

You may assume, seventh, that the regional geological structure as shown on August 1, 1919, is shown on Respondent's Exhibit CZ, which is the regional structure map, Texas University Bulletin No. 1849.

You may assume, finally, that the price of crude oil on August 1, 1919, in this field was $2.25 per barrel.

Now, are you able to form an opinion from the facts from the record which I have just asked you to assume?

Objection by counsel for petitioner on the ground, first, that the hypothesis included facts not in evidence, and, second, that it included facts irrelevant to the present issue. Objection overruled and exception allowed.

Q. Do you need any further facts in order to form an opinion? A. No, sir.

Q. Now, I might state, Mr. Ravicz, that when I spoke of "fair market value" I meant this: I meant the price at which a buyer willing but not compelled to buy and a seller willing but not compelled to sell would agree, assuming that both of them are informed regarding the properties in question, and which price is in money or its equivalent, is ascertainable with fair certainty and is realizable within a reasonable time.

Now, on the basis of these facts and what your might reasonably have interpreted from these facts on August 1, 1919, and in the light of your experience in the oil business and your knowledge of the market conditions at that date, are you able to form an opinion of the fair market value of the Duke-Knoles, Tex-Penn Oil Company leases located in Comanche, Eastland and Erath Counties, Texas? A. Yes, sir.

Q. What, in your opinion, was the fair market value of these leases as of August 1, 1919?

Mr. Davis: Just a moment. The petitioner objects for the reason that the facts which the witness

is invited to assume are, first, not in accordance with the testimony; second, irrelevant, and, third, incomplete.

Objection overruled and exception allowed.

A. $12,000,000.

In arriving at that opinion I take into consideration (a) The large block of leases, 3479 acres, so blocked out that the development thereon can be systematically and economically carried out. (b) The erratic character of the Desdemona district as a whole. (c) The rate of decline of the wells—I take this factor into consideration in planning a development program for the property. (d) The possibility of deeper production; the geological condition in the area being favorable for the accumulation of oil, the possibility of additional oil being found in the deeper horizons is considered. (e) The regional and local geology. (f) Petitioner's Exhibits 68 and 69, showing the record of 241 wells in Eastland and Stephens Counties and the Duke-Knoles area; the table in Petitioner's Exhibit 69, showing that the 241 wells produced 13,167,495 barrels in fourteen months, or an average of 54,600 barrels per well, and then were producing 74,604 barrels daily, an average of 309 barrels per well per day at about July 16, 1919. (g) Exhibits CS and AS, which show a delivery of 828,343 barrels from the sixteen wells on the Hogg Creek leases, or 51,770 barrels per well, for the seven months to the end of July, 1919, and which show a delivery of 302,233 barrels in July, which is 18,889 barrels per well for July, or 609 barrels per well per day. These wells are shown on Exhibit KK-1. (h) Exhibits CS, AS and 30. I combine the production of the sixteen wells on the Hogg Creek leases and the six wells on the Duke-Knoles leases. These twenty-two wells produced 1,249,483 barrels, or an average production per well of 55,800 barrels. As these twenty-two wells are scattered over the Desdemona dis-

trict, I regarded them as demonstrative of the possibilities of the wells of the district. (i) Petitioner's Exhibit 30, showing a production of 421,140 barrels by Tex-Penn Oil Company from the six Duke and Knoles wells. This shows an average production from these six wells of about 70,000 barrels per well, and the group still producing at August 1, 1919. (j) Petitioner's Exhibit 73, which shows the record of the Magnolia-Hogg Creek No. 1 J. N. Duke well, which produced 92,486 barrels up to and including July. This well is in the heart of the Tex-Penn, Duke-Knoles acreage. (k) Petitioner's Exhibits 30 and 73, which show the production of the six Duke-Knoles wells of Tex-Penn and the Magnolia-Hogg Creek Duke No. 1, all being in the heart of the Tex-Penn acreage. These seven wells produced 513,626 barrels, or 73,371 barrels per well, up to and including July. (l) The possible profit which might have been expected to be made from the manufacture of casing-head or natural gasoline. (m) The possible profit to be made from the sale of stripped gas—that is, gas after the gasoline has been extracted. (n) My experience in the oil fields of Oklahoma, Kansas, Wyoming, California and Texas. (o) The Federal corporation income and profit tax of 1919—I mean the form that a corporation would have to fill out in making its Federal income and profits tax return. (p) The possibility of losing all or any part of the capital put into the enterprise to develop and exploit this property. (q) The working capital necessary to start the development and the exploitation of this property. (r) The profit and rate of return I should feel reasonably entitled to receive or give, based on all of the factors involved.

On the contour map (Exhibit DL) we have first a block of leases, shown in green, so well blocked out that competitive drilling is reduced to a minimum and the development on that property can be carried out systematically and

economically. Assuming that the entire block of leases is proved oil acreage, any development of the surrounding property would necessitate line wells and Tex-Penn would drill offsets to the neighboring wells. After such line wells are completed, the entire interior of the block could be developed at will.

I next considered the erratic character of the Desdemona district as a whole. It is not difficult to find small wells alongside or at least not very far distant from big wells, and big wells not very far distant from small wells, also a number of dry holes there which might be regarded as the best part of the field (indicating).

Next I used the rate of decline of the wells in determining the drilling campaign I would have undertaken on this block of leases.

Next, the possibility of deeper production. The oil fields of the world, especially in Texas, are found in districts where we have a quantity of sedimentary formation, the chief types of which are shales, sandstones and limestones. These various strata are generally parallel. By reason of the earth movements forward, or a buckling of the strata, the strata at a certain depth tend to conform to strata at still greater depths. If we have in any area favorable geological structure for the accumulation of oil at one depth, it is reasonable to assume that that same favorable geological structure will continue to a greater depth. The oil that was found in this field was being produced from a depth of about 2700 or 2800 feet. It was possible at that time in 1919 to drill wells as deep as 5,000 feet. When we have that strata between 3,000 and 5,000 feet, there is an excellent possibility of producing more oil.

In valuing oil properties I take into consideration two important things: First, the determination of the most favorable acreage, or, in other words, what might be called proved acreage. For this purpose a contour map is generally considered by geologists as the best guide. Exhibit

CL shows the regional structure of Central Texas. Among geologists in 1919 this structure was known as a plunging arch or plunging anticline, with the axis shown here on Exhibit CZ (indicating). The contour interval on this map is 500 feet, so that at this point (indicating) the formation might be found at a depth of 1,000 feet. This is all based on the sea level datum. As we go farther north the same formation will be found at a greater depth. Superimposed on the regional arch are smaller structures, one of which is pictured here. I am referring to my own map here. To construct such a map it is necessary to get the depth of the wells and the depth of the lime formation, as it was known in this field. That data is disclosed on these cards here in evidence. Taking the total depth of a well to the top of the lime and deducting the elevation gives you the depth below sea level. The elevation is the elevation at the mouth of the well, the surface elevation. Your sea level along the side of the Gulf of Mexico is zero. As you get back into Texas, for instance, the level of the surface of the ground as referring to sea level is the elevation. Elevation is the height above sea level on the top of the ground. In this case the elevations given on the cards are those at the mouth of the well. These are not well mouth contours; they are sub-surface contours. This is an attempt to picture what would be found at the top of the lime if you could remove all the material down to that level. If this well was all flooded and you had removed the earth at the water level at 1200 or 1250 feet, you would have this as the shore line around the island. If you dropped the level of the water another 50 feet, you would have this (indicating) as the shore line.

There is proof in many districts that gas and oil have a tendency to separate. Gas, having a lighter specific gravity, will rise; oil, being heavier than gas, will seek a lower level. We have such a structure here, the dip being down this way (indicating), down this way (indi-

cating), and slightly down this way (indicating). This dome structure, as it is called, is ideal for trapping oil and gas—what we call a closed structure.

The purpose of this map is to give me an idea of what I can regard as the most favorable acreage in the district. I find in looking over these wells, especially these large ones (indicating), that they all lie within my 1350-foot contour. You also find oil outside of that contour, in fact, outside of the 1400-foot contour. The most favorable piece will lie within that contour. The most favorable direction lies up the dip; the most favorable lies at a shallow elevation or up the dip. Your dip is down this way, down this way and down this way (indicating). In other words, this is 1250 feet below sea level and this is 1350 feet and this is 1400 feet (indicating).

In this particular case the data on which this is based is not as satisfactory as it might be and nowhere near the amount of weight can be given to the indications as would be given if the data were much more complete than it is; but I used this for what I consider it is worth.

Another factor, irrespective of the contours, is the appearance of this block of leases: To the north, big production; on the east, oil; on the south, oil; on the northwest, oil, and on the west, some oil and some dry holes. That erratic character must not be overlooked because here on the east we have a dry hole and we have another one offsetting our acreage. Based on the appearance here and possibly on the general structure, it would seem that there would be a possible belt through the heart of the Tex-Penn leases. Also we have a cluster of seven wells right on the property; so, in addition to having oil pretty much all around us, with the exception of down here (indicating), we have seven wells on the property. Standing off at a distance and looking at it, having in mind the development there would be, there would be no reason why, in a belt here (indicating), other clusters of seven wells might

not be reasonably expected. Combining these three considerations, I have estimated that out of this block of 3,479 acres there would be found between 2,000 and 2,500 acres of profitable ground, equally as favorable as anything within the 1350-foot contour which I have drawn here.

The next problem is to get at what might be expected from the average well to be drilled on these 2,000 or 2,500 acres. To get at that, we have to consider the life history of the other wells in the district. The consideration which I give the greatest weight to in that respect is the performance of the 241 wells previously mentioned. Some of the wells mentioned in that tabulation are in this very district; others in the Ranger which I show up north here (indicating) and others immediately north of Ranger, in what is known, in general, as Eastland and Stephens Counties.

*By Mr. Davis.*

Q. You say that some of the 241 wells in that exhibit are within "this very district"; what district do you mean? A. The Desdemona district. I am talking now about the Desdemona leases.

Q. Yes, I just wanted to understand that. A. The district, however, covers what is known as Eastland County, Stephens County and the Duke-Knoles area. That is Petitioner's Exhibit Nos. 68 and 69.

*By Mr. Foley.*

Q. Mr. Ravicz, in asking the hypothetical question, in the fifth subdivision I said to you that you might assume that Petitioner's Exhibits 68 and 69 showed 241 wells in Eastland, Stephens, Comanche and Erath Counties, producing 13,167,495 barrels of oil prior to July 16, 1919. Now, I want to amend that question so as to read Petitioner's Exhibits 68 and 69 show that the 241 wells in the Ranger district produced 13,167,495 barrels of oil prior to July 16, 1919, and I also want to change the question

in this much: In subdivision 4, line 2, I referred to the Gulf geological cards as Respondent's Exhibit CG. I should have said Respondent's Exhibit CT.

The change in the question showing the 241 wells in the Ranger district rather than in the Eastland, Stephens, Erath and Comanche Counties district would make no difference in my answer to the hypothetical question as I considered the Ranger district as part of the Eastland, Stephens, Erath and Comanche Counties district. Exhibit DL is my work sheet. Where the data is positive or based on a great many well logs or well records the geologist or engineer is warranted in drawing his lines in solid, as I have done here. Where the data is not quite as good as I would like to have it, when there is considerable uncertainty about it, it is customary to draw them all in broken lines. I feel I should draw them all in broken lines.

As I have already said, I considered about 2,000 or 2500 acres of this block to be the most favorable and I was trying to get at which I could regard as an average expectation per well of this most favorable acreage. I mentioned first the 241 wells which produced 13,167,495 barrels in fourteen months, an average of 54,600 barrels a well. These wells are labeled in Petitioner's Exhibit 69 as for Ranger, but the entire district is comparable. After having made 54,600 barrels per well, the wells were then making 74,604 barrels daily, or an average of 309 barrels per well. These wells are about 2800 feet to the pay horizon. At Ranger the wells are about 500 feet deeper, which is just about what we expect from the contour map. Getting closer to the Desdemona district or the Desdemona part of this whole district, Exhibits CS and AS show the amount of oil delivered from sixteen wells of the Hogg Creek leases; the average is 51,770 barrels per well for a seven months period. This is just half the time had for the Ranger district, yet they made con-

siderably more oil. The wells at Ranger after the fourteen months were averaging 309 barrels per well per day; based on July these sixteen wells were making about 609 barrels.

The sixteen wells I have encircled with red. Here is one down here. Getting closer to the property, the record of the cluster of six wells on the Duke and Knoles was about 70,000 barrels per well and the group still producing some more. As possibly a more representative figure I have combined the sixteen wells with the six wells and that gives 55,800 barrels per well. The Magnolia Hogg Creek Duke No. 1 well in the heart of the acreage produced about 92,486 barrels. A mathematical average of the seven wells would show 73,375 barrels per well.

The next problem is what I might expect in my most favorable acreage, based on the performance at Ranger, right here in the district and right on the property. It is my conclusion I could expect average wells of about 60,000 barrels per well. I should regard that as a reasonable expectation.

We turn now to the possible profit. I have not allotted much to the possible profit to be made from the manufacture of casing-head or natural gasoline or from the sale of stripped gas. I have studied wells in many of the California fields where the production per well would be a great deal more than 60,000 barrels; in other districts closer to this area, the Smackover, in Arkansas, for instance, some of the fields in west Texas where the production would be up to 60,000 barrels per well, or, I believe, in excess of that. Many of the fields in Oklahoma, I believe, would show that same result or better. Based on my experience, 60,000 barrels per well would be a reasonable expectation.

In a general study of the area as a whole, and on the point of decline of the wells, it seemed reasonable to as-

sume that this property might be developed in from two to three years and all the oil extracted. Based on a two-year plan allowing 60,000 barrels per well, it was my plan to drill 250 wells. This would mean approximately one well to 8 acres and the current practice would have gone one well to eight acres. One well to eight acres at 60,000 barrels would give 15,000,000 barrels. 250 wells. 60,000 barrels per well. Each well eight acres. I believe I stated I regarded 2,000 to possibly 2500 acres as a reasonable amount of this acreage to produce these average wells. I did not condemn the balance. It has possibilities but I felt reasonably certain that I could get this out of it. 15,000,000 barrels of oil at $2.25 per barrel is $33,750,000. Deduct one-eighth royalty, $4,218,750. That would leave a gross of $29,531,250. The expense of development and production of the oil is $8,750,000. I have estimated an expenditure on each well for drilling and for production of the oil of $35,000 per well. This covers drilling and production of oil. Deducting the expenses of development and production would leave $20,781,250. The recovery through salvage after the property had been thoroughly worked out I estimate as $1,000,000. Adding that back to the previous figure would give $21,781,250. The fair market value of the property, in my opinion, was $12,000,000.

Assuming the organization of a corporation to buy and develop this property, there would need to be raised $14,000,000, of which $2,000,000 would be working capital to start this development program.

We study next what might be the tax on this program. For the purpose of estimating the tax I have assumed a profit of $5,000,000 for each year for two years. In other words, the cost of the property is $12,000,000. I make that cost back and $10,000,000 profit. Based on the tax laws as of that date, as I judge them from the returns, the corporation income and profits tax return, the net

income for the taxable period, $5,000,000, under Schedule B, invested capital: Invested capital for the taxable period, $14,000,000. Schedule C, excess profits credit. 8 per cent. of invested capital for the taxable period, $1,120,000. Exemption $3,000. Adding the two together would be $1,123,000. Schedule D computation of taxes. It is difficult to describe this unless someone has a tax form before them. The tax as I have computed it would be $1,593,860 for each of two years, which would be $3,187,720 for the two years. The final profit under this two-year development program would be $6,593,530. It might not be possible to develop this property fully and extract every barrel of oil in two years. It seems reasonable to estimate that it could be done within three years, so I have gone through the same procedure on a three-year basis. In that basis the tax for the three years would be $2,481,576, or, for each year, $827,192. I have assumed in both of these that the profits would be equal in each one of the years and that it would be paid. In the two-year plan the profit would be $6,593,530. In the three-year plan, $7,299,674. It appears from that that the profit is greater in the three-year period. The difference there is in this 40 per cent. rate on items of income over and above 20 per cent. of invested capital. If I assume then that this property would be developed in somewhere between two and three years, adding the two together and dividing by two, $6,946,602 represents the average of the profit under the two-year plan and the profit under the three-year plan.

Mr. Davis: Adding the two together and dividing by two?

The Witness: Adding the two together and dividing by two. Here, then, if I paid $12,000,000 for this property I would get my money out of it, the cost price out of it, my working capital out of it, and would have a profit of the figure mentioned, $6,946,602.

The next consideration is the possibility of losing any part of the capital put into an enterprise to develop and exploit this property. It did not seem possible to me that anyone starting out to develop this property as it appears there could possibly lose his money or any part of his money and, as I see it, here was the chance of making a profit of something close to $7,000,000. I therefore conclude that $12,000,000 is the fair market value of this property and the figure at which a willing buyer and a willing seller would arrive at on August 1, 1919, as a basis for purchase or sale.

The following hypothetical question was thereupon put to the witness:

Q. Mr. Raviez, I will now ask you another hypothetical question. This question will relate not to the Tex-Penn Duke-Knoles leases, but to the 1,007,834 shares of the Transcontinental Oil Company. I will give you the following assumptions and you may base your opinion upon them. That is, you may assume that the following facts are established and may be used as the basis for your opinion.

The Transcontinental Oil Company was organized under the laws of Delaware on June 28, 1919, with a capital stock of 2,000,000 shares of common stock of no par value. That is, the stock was common. There was neither preferred stock or bonds outstanding. The company was authorized by its charter to produce, refine, sell and distribute petroleum and its products, and to purchase, lease and exploit lands, or the oil, gas or mineral rights in lands, for the purpose of producing oil and gas therefrom. It disposed of 750,000 shares of its stock to Prichitt & Company, bankers of New York, and E. W. Clark & Company, bankers of Philadelphia, for the aggregate of $20,225,000, made up as follows: 500,000 shares at $40 per share; 25,000 shares as a bankers' commission, and 225,000 shares which the bankers were given an option to purchase at $1 per share.

You may assume that the Transcontinental Oil Company was bound to use the entire proceeds of $20,000,000, the same being the proceeds of sale of 500,000 shares of its stock to the bankers at $40 a share, as working capital and in the acquisition of properties.

The Transcontinental Oil Company, for a portion of the cash so received and the balance of its stock acquired all of the assets of the Tex-Penn Oil Company, which included a one-fourth working interest in the Duke-Knoles leases, a five-eighths overriding royalty in the same property, all of the remaining assets of the Tex-Penn Oil Company, all of the assets and liabilities of the Pittsburgh-Texas Oil & Gas Company, all of the assets of the Riverside Western Oil Company and its subsidiary, and all of the assets of the Riverside Eastern Oil Company and its subsidiaries. The consideration paid for those assets is shown in the following table:

The Tex-Penn Oil Company and the owners of five-eighths overriding royalty in the Duke-Knoles leases received $9,000,000 in cash, and 1,007,834 shares of Transcontinental Oil Company stock, and hereafter when I refer to stock in this tabulation it means Transcontinental Oil Company stock.

The Pittsburgh-Texas Oil & Gas Company received 158,833 shares of stock. The Riverside Western Oil Company received $1,250,000 in cash and 41,667 shares of stock. The Riverside Eastern Oil Company received $1,250,000 in cash and 41,667 shares of stock.

The item of $9,000,000 cash was paid to the five lessees who were Messrs. Wrather, Lantz, Kirkland, Benedum and Parriott, and to the Tex-Penn Oil Company as follows:

| | |
|---|---|
| Benedum | $1,368,750 |
| Parriott | 2,184,375 |
| Kirkland | 2,184,375 |
| Lantz | 1,456,250 |
| Wrather | 1,456,250 |
| Tex-Penn Oil Co. | 350,000, |

the total making $9,000,000.

In accordance with the contract between Benedum, Parriott and Holliday, of July 24, 1919, and in accordance with the offer made by Holliday to the Tex-Penn Oil Company, and accepted by that company, Holliday instructed the Transcontinental Oil Company to pay to the Tex-Penn Oil Company $350,000 cash and to deliver to Benedum and Parriott, as sole stockholders of the Tex-Penn Oil Company, 1,007,834 shares of Transcontinental Oil Company stock. The Tex-Penn Oil Company had previously, by resolution of its board of directors, directed the Transcontinental Oil Company to pay the $350,000 into the Tex-Penn Oil Company's treasury and to issue the stock directly to Benedum and Parriott. Of the stock so received, Benedum received 683,037.123 shares and Parriott 324,796.875 shares. Benedum and Parriott agreed that under no circumstances were the shares of Transcontinental Oil Company stock to be sold or parted with in any way by them during the life of the underwriting syndicate. The syndicate by its terms would have expired on October 18, 1919, but the syndicate managers were given the right to extend it for a period of ninety days in addition, or until January 16, 1920. As a matter of fact, the syndicate terminated on January 8, 1920.

You may assume that the balance sheet of the Transcontinental Oil Company as of August 1, 1919, is shown on Petitioner's Exhibit 59 and headed (B) as of August 1, 1919.

For the purpose of your testimony, you may disregard the amount shown as the asset item, "Property acquired at organization," and the liability account of "Capital Surplus" in the balance sheet. You may also assume that the item "Bankers' Subscription to Stock, $9,377,115," is entirely made up of an unpaid portion of the proceeds of the sale of Transcontinental Oil Company stock to the bankers, E. W. Clark and Prichitt & Company, and that this item was an account receivable worth 100 cents on the dollar.

The current asset and liability accounts are self-explanatory, and you may accept them as correct.

"Properties acquired at organization" consisted of the following:

(1) The Duke-Knoles leases concerning the value of which you have testified.

(2) Certain wholly undeveloped oil properties in Texas, Louisiana, and South America, having an aggregate value of $221,500 on August 1, 1919.

(3) From the Riverside Eastern Oil Company and its three subsidiaries, the Transcontinental Oil Company acquired ten casing-head gasoline plants, two blending stations, two compounding plants, thirteen distributing stations, rolling stock, equipment, etc., all in West Virginia and Ohio, three small producing oil and gas leases in Ohio and West Virginia, and various casing-head gas purchase contracts. The company obtained gas needed in its gasoline manufacturing operations from these gas purchase contracts. The assets acquired constituted all of the assets of the Riverside Eastern Oil Company and its three subsidiaries. You have before you Petitioner's Exhibit 40, listing the physical assets acquired with a brief description of their locations, character and the cost of acquisition, less depreciation. You also have before you Petitioner's Exhibit 42, showing the book profits or losses realized by the Riverside Eastern Oil Company and its three subsidiaries for the years 1916, 1917 and 1918, and seven months of 1919, before depreciation and after depreciation, depreciation being computed at rates used by the Treasury Department in auditing the company's current returns, such statements showing average yearly net earnings over the period of operation of $27,876.

(4) From the Riverside Western Oil Company and its subsidiary, the Transcontinental Oil Company acquired

seven casing-head gasoline plants and two blending stations located in Oklahoma, and one compounding plant and six distributing stations located in Nebraska, Iowa and South Dakota, and various casing-head gas purchase contracts. The Riverside Western Oil Company obtained the gas needed in its gasoline manufacturing operations under these contracts. You have before you Petitioner's Exhibit 44, listing the physical assets acquired from the Riverside Western Oil Company, with a brief description of their location, character and cost of acquisition, less depreciation. You also have before you Petitioner's Exhibit 45, showing the book profits of the Riverside Western Oil Company and its subsidiary during the years 1913, 1914, 1915, 1916, 1917 and 1918, and seven months of 1919, before depreciation and after depreciation, depreciation being computed at rates used by the Treasury Department in auditing the company's current returns. The average net profits over the period in question, after deducting depreciation, were $45,200.

(5) The Transcontinental Oil Company acquired from the Pittsburgh-Texas & Gas Company, the Boynton Refinery and related facilities, located in Boynton, Oklahoma, which you may assume had a value of $500,000. In addition to the Boynton Refinery, the Transcontinental Oil Company acquired from the Pittsburgh-Texas Oil & Gas Company certain assets and current liabilities on or about August 1, 1919, which you may assume are reflected in balance sheet B as of August 1, 1919, Petitioner's Exhibit 59. In addition to the above-listed assets, the Transcontinental Oil Company acquired on or before August 1, 1919, from the Pittsburgh-Texas Oil & Gas Company certain undeveloped oil leases in Texas, and certain developed leases in Oklahoma, having an aggregate value of $238,500 on August 1, 1919.

During the three months from May 1, to July 31, 1919, the operations of the Pittsburgh-Texas Oil & Gas Com-

pany resulted in a net loss of $65,575.42 after proper deductions for depreciation.

Now, I will ask you whether, with those assumed facts, you can form an opinion of the value of 1,007,834 shares of Transcontinental Oil Company stock as of August 1, 1919?

Mr. Davis: Just a moment.

Member Van Fossan: Do you mean to limit your question to the stock held by the two petitioners?

Mr. Foley: That is correct. I will amend that so as to say: Can you express an opinion as to the fair market value of the 1,007,834 shares of stock issued to Messrs. Benedum and Parriott?

The Witness: Yes, sir.

Mr. Davis: I object to any answer to the question in its present form because * * *. The witness is invited to accept contrary assumptions. He is invited * * * to assume that the Tex-Penn Oil Company and the five-eighths overriding royalty in the Duke-Knoles leases, received $9,000,000 in cash and 1,007,834 shares of stock. He is invited later on on the same page to assume 1,007,834 shares of Transcontinental Oil stock were delivered to Benedum and Parriott. I submit those two assumptions are inconsistent.

Objection overruled and exception allowed the petitioners.

Q. Mr. Ravicz, in putting the question to you, I said that the properties acquired at organization consisted, among other things, of the Duke-Knoles leases concerning the value of which you testified. Inasmuch as you have testified that those leases had a value of $12,000,000, for the purpose of this stock question you may assume they had a value of $12,000,000. * * *

Fair market value, Mr. Ravicz, you may assume to be the price upon which a buyer willing, but not compelled to buy,

and a seller willing, but not compelled to sell, will agree, both being informed as to the property, which price is in money or its equivalent and is ascertainable with fair certainty and is realizable within a reasonable time.

I will ask you the question in order to make sure. On the basis of the facts stated in the hypothetical question, can you form an opinion as to fair market value on August 1, 1919, of the 1,007,834 shares of Transcontinental Oil Company's stock received by Messrs. Benedum and Parriott? A. Yes, sir.

Q. How much was that value? * * * A. $11,101,582.

*By Mr. Foley.*

Q. Now, Mr. Ravicz, I am going to vary the hypothetical question to a certain extent. I am going to add to the hypothetical question which you previously answered the assumption that the restrictive agreement would permit only of a present sale of the stock to be delivered after the termination of the syndicate operations, and the purchaser meanwhile to be the beneficial owner of the stock, and ask whether that change in the hypothetical question would change your opinion as to the value of the stock? A. The figure would be the same, $11,101,582.

Q. Now, I want to make a further variance to the hypothetical question. Assume that there were omitted from the hypothetical question all reference to the restrictive agreement, are you then able to form an opinion of the fair market value of the stock on that basis? That is, the stock is not restricted.

Mr. Davis: I object to that on the ground the hypothetical question so amended does not conform to the facts in the case.

The Presiding Member: Will you read that question?

(The last question as recorded was read by the reporter.)

The Presiding Member: What is your objection?

Mr. Davis: My objection is that the hypothetical question so amended does not conform to the evidence in the case.

The Presiding Member: I will overrule the objection.

Mr. Davis: Exception.

The Presiding Member: Note the exception.

*By Mr. Foley.*

Q. Do you remember the question? A. The answer is yes.

Q. What would that value be if the question were so stated? A. In my opinion, $12,615,434.

* * * * * * *

The Presiding Member: Mr. Foley, I think I erred in my ruling on your last hypothetical question. As I understand it, the rule is that, on direct examination, a hypothetical question must be based upon proof, and there is no proof in this record that this stock, 1,007,834 shares was received without a restrictive agreement. Therefore, I think that question and answer should be stricken.

Mr. Foley: And may I have an exception to the Board's ruling?

The Presiding Member: You may.

Mr. Foley: And may I offer to prove by the witness that, if permitted to answer, he would have answered the question that the fair market value of the stock, without the restriction was how much——

The Witness: $12,615,534.

In giving my reasons for the value placed on this stock I should like to read this outline, which I myself prepared, so that the discussion may be more readily followed:

(a) The capitalization of the company. That is shown on Petitioner's Exhibit 59, balance sheet B as of August 1, 1919. Under the capitalization, I considered the funded debt, the amount and maturities, the preferred stock, the common stock.

(b) The earnings, past, present and future possibilities.

(c) The balance sheet, Petitioner's Exhibit 59, balance sheet B as of August 1, 1919; under the balance sheet the financial condition as regards cash, cash equivalent, inventories, receivables, current assets in general, accounts payable, current liabilities in general, the net working capital, the ratio of current assets to current liabilities.

(d) The surplus account, Petitioner's Exhibit 59, the balance sheet B as of August 1, 1919.

(e) The value of the property owned by the company.

(f) The position of the company in the oil industry, a major company, a minor company, a strictly local company.

(g) The reputation of the company. In this case, the reputation was acquired from the reputation of one of the sponsors of the enterprise.

I know Mr. Benedum's reputation as of August 1, 1919, only as it was known in the oil industry.

Q. What is that reputation?

Objection on the ground of immateriality; overruled and exception allowed.

A. The reputation of Mr. Benedum was that of a successful oil operator.

Q. In large or small operations, Mr. Ravicz? A. Well, in the oil industry at the time, the firm or partnership—I don't know what it was—of Benedum and Trees was generally regarded as having been very successful in the oil business. I might mention a number of enterprises

that were associated with that name: The Tropical Oil Company, the Arkansas Natural Gas Company. Also it was a matter of common gossip that Benedum and Trees were successful wildcatters, drilled properties, sold them, and generally regarded as well informed and successful oil operators.

(h) The money market, or the cost of money at August 1, 1919.

(i) The market for oil securities at August 1, 1919.

(j) My experience in the valuation of securities of oil companies.

(k) The restriction regarding the sale of the stock.

We take the value of the properties owned by the company—the Duke-Knoles leases, $12,000,000, other leases, by stipulation, $460,000; Boynton Refinery, assumed, $500,000; gasoline plants and marketing facilities, $637,161; property value total, $13,597,161.

The only item entered there which has not been previously discussed or assumed or stipulated is the value of the gasoline marketing properties. These are shown on Petitioner's Exhibits 40 and 44.

Exhibit 40 shows Riverside Eastern, the plant location, year constructed, the type, the daily gas capacity in thousands of cubic feet, cost and depreciated value of the gasoline plant. It shows the marketing facilities, the type, the plant construction in dollars, tanks and equipment, drums and cans, land, cost, depreciated value at August 1, 1919.

The gasoline plants I considered as out of date and as having only a salvage value. This I regard as 20 per cent. of the cost. That would be $111,392.40.

The marketing facilities have a value equal to their depreciated value. That is, the value to the Transcontinental as a set up and going concern.

The properties of the Riverside Eastern Oil Company are valued at $342,840.

Exhibit 44 gives the same information with respect to Riverside Western. These gasoline plants are also out of date and are worth, as I see it, only their salvage value, which I estimate to be 20 per cent. of the cost, or $218,000.

To Transcontinental as a going concern the marketing facilities are worth the depreciated value as shown on this exhibit, $76,321.

The total value of the properties of the Riverside Western Oil Company I estimate at $294,321; and the total gasoline and marketing facilities at $637,161.

Turning to balance sheet B as of August 1, 1919, (Exhibit 59) the current assets as are shown thereon, I regard as $9,652,170.71. That is the current assets as I read this balance sheet. They are cash, $27,697.39; accounts receivable, $39,774.63; bankers' subscription to stock, $9,377,115; inventories, $207,583.73. The current liabilities consist of accounts payable of $490,470.29. The net working capital is $9,161,700.46. The total property value and net working capital is $22,758,861.46. There being no funded debt that is eliminated from the outline; there being no preferred stock that is eliminated; and the common stock, or the capital stock, consisted of 2,000,000 shares of no par value common stock.

Studying the condition of the company for a moment, the net working capital of this company of $9,161,700.46 indicates an excellent financial condition. The ratio of the current assets to the current liabilities is almost twenty to one, which is extremely satisfactory. The surplus account I disregard entirely.

There is a great deal of difference in valuation of securities of an oil company when it is a company of major or minor standing or strictly local company. I should regard the Transcontinental as a minor company, as I list them.

At August 1, 1919, money rates were not high, but fairly so. Time money was 6 per cent. and that is a fairly high rate. High grade corporation and railroad bonds were sold on about a 5 per cent. basis. I do not know what the call money rate was at that time, but I would not consider it as a factor in here.

The next consideration (i), the market for oil securities at August 1, 1919: At that particular time, there seemed to be an almost insatiable appetite on the part of the public for oil securities. The flotation of oil companies were matters of almost daily occurrence. It would have been possible, I should say, to—may I cross that last out?

*By Mr. Foley.*

Q. You want to change your testimony, Mr. Ravicz? A. Just the last line.

Q. If so, just make a correction in your testimony. A. May I ask how you do that?

Mr. Foley: Will you read what the witness said?

Mr. Davis: I think he had better not strike out anything. Let him read the sentence as it is.

The Presiding Member: We do not strike anything out.

Mr. Foley: No, but he may make a correction, if it is desired.

(The reporter read the last part of the answer as follows:)

"It would have been possible, I should say to——"

The Witness: It would have been possible, I should say, to have sold this block of 1,007,834 shares without much difficulty. The reason I have requested to drop that was, because, for the moment, I had forgotten about the restrictive provision. I say it would have been possible, had there been no restriction, in my judgment, to have sold this stock.

I take into consideration my experience in the valuation of securities of oil companies. And I take into consideration the restriction regarding the sale of the stock.

We have already given the property value and the net working capital, totaling $22,758,861.46. I add 10 per cent. to that value, which I consider the value as a going concern. Including a reasonable estimate of the cost of financing $22,000,000, the total will then be $25,034,747.60. As there were 2,000,000 shares which represented this company, I pro rate as between the 2,000,000 shares and 1,007,834. The pro rata part which, for the moment, would be without restriction, is $12,615,434.90.

Considering the condition of the money market at that time and the fact that any buyer would have had to pay his money, he would not receive the full benefit of the stock until January 16, 1920; and considering the stock market for all securities on August 1, 1919, when the conditions were almost ideal to dispose of stock, if it was unrestricted, I consider a deduction of 12 per cent. for the restriction. That deduction would amount to $1,513,852.19, which would then leave $11,101,582.71, which I conclude is the fair market value of the 1,007,834 shares, and the figure at which a willing buyer and a willing seller would have arrived on August 1, 1919, as a basis for purchase or sale.

The outline which I have employed is the one which in general practice I use in appraising the stocks of companies in my regular employment with Hayden, Stone & Company. Of course, every piece of business has its own problems, and the outline of consideration would have to be varied to meet the particular piece of business. If a first mortgage bond issue is under consideration, that would be one thing. If it was a convertible debenture or convertible stock proposition, that would be another matter. If it was common stock, it would be another matter. The line of procedure is the same. I might add, though, that the restrictive agreement does not enter, or very seldom enters, if ever.

*Cross-examination.*

My method of valuing these shares is not to ascertain the value of the company's assets, add 10 per cent., because it is a going concern, pro rate that total among the shareholders share for share, and discount the portion which falls to the 1,007,834 shares by 12 per cent. on account of the restrictive agreement. That is not what I have done. I have valued this as a block of stock, not on a per share basis. I don't like that thought there of a share for share basis, because that sets up in my mind the value of this stock in small lots of shares. Now, I regard there is a different value between a large block of shares and a small block, like 100 or 200 or 300 shares. I regard the wholesale price for a block of shares in the same manner as most any merchant who buys at wholesale and sells at retail. In this case we have a block of shares; this is a wholesale price. Therefore, I took 1,007,834 shares over 2,000,000 shares, times $25,034,747, which would give me the pro rata part of the total to allot to the 1,007,834 shares. The mathematical result would have been exactly the same if I had taken the total asset value, divided it by 2,000,000 to ascertain the proportionate part falling to each share and multiply it by 1,007,834 shares to ascertain the amount that falls to that block, but I have always considered this to be a block of shares. I have considered it to be a block of shares representing in the aggregate 1,007,834 times the amount that would fall to each individual share; you can work out the same calculation on the per share basis and arrive at the same figure. Deducting 10 per cent. for going concern value, that represents the asset value of the shares as they would have been if, on August 1, 1919, the company had immediately dissolved and distributed its assets at their then value. After deducting the 10 per cent. going concern value I have taken the rest of the assets and gone into immediate liqui-

dation and divided it among the shareholders. I think this is a proper way to value stock in a corporation. I should not have considered, in this case here, valuing this enterprise as a liquidating enterprise. That is what I have said, except for the 10 per cent. which I have added. You could not ascertain the fair market value of a share of stock in the United States Steel Corporation by appraising its tangible and intangible assets, adding 10 per cent. for its quality as a going concern and dividing by the number of outstanding shares.

*By Mr. Davis.*

Q. Now, you have taken into consideration, you have said, the market for oil securities on the 1st day of August, 1919, when there was apparently an insatiable appetite. Of course, if this stock could not have been sold for six months, it derived nothing by reason of that market, did it? A. I should say it was handicapped by it. * * *

My line of reasoning is this: I have deducted 12 per cent. on account of the fact that the parties could not sell until January 16, 1920.

Q. You understood, did you not, the question that was put to you, that you were called on to determine the fair market value, realizable in cash or its equivalent, and ascertainable with fair certainty; and you say, because this stock could not be sold on that date, but could only be sold six months later—I am speaking in round figures—that you discounted it 12 per cent. What basis of facts have you on which to predicate that 12 per cent. discount? A. Well, Mr. Davis, the yardstick for that—the yardstick for basing any such estimate as that is very indefinite. Might I—— * * *

As I said, the yardstick for that particular feature, that 12 per cent., is very indefinite. * * *

Q. Is there any yardstick? A. None that I know of, except what I should regard as the fair market value of that restriction.

Q. You mean you are valuing the restrictions separate and apart from the stock? A. Maybe I did, but I applied it to the stock as a part of the entire valuation.

Q. But with no yardstick by which that mental process could be conducted? A. Practically none.

In valuing the assets the value I put on the Tex-Penn leases is the largest item, and the item of the net current assets of $9,107,700 is the next largest item. That makes up about $21,000,000 of the $22,700,000. The assets that make up the $9,000,000 are balance sheet items.

The contour lines on map marked DL for identification are about as approximately correct as I will be able to draw them, based on the data I had to use. I had sufficient data to locate those contours as I have; yes, sir, with reasonable certainty, I believe I stated that the more data we have the more certain I should be of the position of these lines. The possibility of the data I have available I feel warranted me in putting the lines on there as dashed lines or broken lines. The difference between the dashed line and a solid line is pretty much a difference as we engineers understand it or geologists understand it. It is a matter of how certain we feel of the exact position of that line. If I had well logs at every 600 feet all the way across here and all the way across here (indicating on maps), and all over the map I would draw those lines in solid. Based on the data I have here I should prefer to draw them in as broken lines. That means that I cannot be certain about their location.

Q. Take the closed oval in the survey of H. T. & B. How many wells have you got to locate that closed oval by? A. You mean this one (indicating on map)?

Q. Yes. A. Well, Mr. Davis, I think I would have to go into an explanation of how I would make a contour map.

Q. Well, answer that question; then we will take your explanation afterwards. How many wells had you to

locate that closed oval by? A. Mr. Davis, this is a presentation based on all the data.

Q. Can you not answer the question I put to you? How many wells have you to locate that closed oval by? A. Well, I have the evidence of all the wells that I have used wherever they are.

Q. Well, whether they are on the oval, or off the oval, or within two miles of that oval? A. Anywhere around it here where I found data I thought I could use, I used it.

There are two inside that oval there. That is all.

In the map DL I closed all my contours to the south and left them open to the north. That was for lack of data. I have not the data up in here. I do not know whether it was for the same reason that the witness Woodruff closed all his contours to the north and left them open to the south. That is his map and this is mine. I was more particularly interested in the Tex-Penn Duke-Knoles and I did not stray all over the landscape.

In considering the rate of decline of the wells, I did so only for the purpose of estimating a two-year development campaign as against a three-year development campaign and that was taken from the performance of these 241 wells on Petitioner's Exhibit 69. I gave a great deal of weight to that exhibit. My intention was to say I gave it great weight.

Q. You stated, did you not, at page 2632 of the transcript: "The consideration which I gave the greatest weight to in that respect is the performance of the 241 wells previously mentioned." Did you or did you not make that statement? A. I presume I did, but let me say, Mr. Davis, that the experience I have had with attorneys is that I have always noticed they use much more exact English than I or other engineers use.

Q. I am grateful on behalf of the attorneys for the compliment. But now I am trying to find out whether your

deductions are as exact as the attorney's language. A. I gave great weight to the performance of those 241 wells.

Q. You stated, did you not, that those 241 wells included some wells in this very Desdemona district, did you not, or on the Desdemona leases, if you choose? Did you or did you not make that statement? A. My intention was to make the statement that the 241 wells were in Eastland and Stephens County, the Duke-Knoles area in Comanche and Erath County.

Q. Were you or were you not put this question by myself, "You say that some of the 241 wells in that exhibit are within this very district; what district do you mean?" And did you answer, "The Desdemona district. I am talking now about the Desdemona leases." Do you remember that question and answer? A. These 241 wells are not in the Desdemona district.

Q. I am asking you now whether you recollect that question and that answer on yesterday? A. I did not intend to give that impression.

Q. Well, the question was quite specific, was it not? A. As I stated, my answers are rather general.

Q. That is on page 2633. As a matter of fact, then, you say that none of the 241 wells on Exhibit 69 that you give such importance to is in the Desdemona district; is that your present testimony? A. Just where are you going to draw the line between the Desdemona district, the Ranger district, Eastland and Stephens Counties and the Duke-Knoles areas in Comanche and Erath Counties as per this exhibit.

Q. I am not trying to draw the line. I am asking you to draw it. A. I have indicated it on the map.

Q. Were or were not the 241 wells in Exhibit 69 or any of them within the Desdemona district? A. Well, to speak absolutely and literally I would have to say Ranger, which is part of this whole district.

Q. The question which I put to you was provoked by this statement: "Some of the wells mentioned in that

tabulation are in this very district," and I asked you what district you meant and you said the Desdemona district. Now, I ask you if you adhere to that statement or if you want to change it? A. I understood when—I really believe I understood when you asked this question, was it on this exhibit, Exhibit 68 and 69?

Q. Well, do you or do you not now stand by the statement that some of the 241 wells on which you relied to determine the rate of decline were in the Desdemona district? Now, may we have an answer to that question? * * * A. May I have the question read?

(The pending question was thereupon read by the reporter as above recorded.)

A. I do not know how you are going to chop this district off. It says here, "An article summarizing development in Stephens and Eastland Counties and the Duke-Knoles area in Comanche and Erath Counties, Texas, as shown by the accompanying table, appears on page 46 of the National Petroleum News, of which this insert is a supplement."

*By Mr. Davis.*

Q. Your data is drawn from an insert, I take it, the tabulation in the lower right-hand corner of Exhibit 69, am I right? A. I used those figures in arriving at what I thought would be the reasonable expectation of a well.

Q. Those figures— A. In the district as a whole.

Q. That is only—it is from that tabulation that you drew your 241 wells, is it not? A. It is from this tabulation that this particular man on the staff of the National Petroleum News drew them.

Q. I am not concerned about the National Petroleum News. I am concerned at the moment with the witness, Louis Ravicz, and I ask you whether you got your 240

wells from that tabulation in the lower right-hand corner of Exhibit 69; if not, where did you get them? A. I got from the tabulation at the bottom of Exhibit 69 a tabulation showing the performance of 241 wells at Ranger.

Q. Now, I ask you the question, Do you or do you not now contend that any of those 241 wells were in the Desdemona district?. A. You have to ask the man who made this table.

Q. Well, I am asking the man who said that that table was the thing on which he placed the greatest reliance. You told me that some of the wells— A. Great reliance.

Q. —are in the very district, in the Desdemona district, and I am asking the man who made that statement whether or not he still adheres to it. A. I placed great reliance on the table shown at the bottom of Petitioner's Exhibit 69; this table right here (indicating).

Q. Now, you know what I asked you, do you not? A. Possibly I did not get the exact meaning. Read that question.

Q. I will ask you again and try to put it in words of one syllable. Do you or do you not now assert that any of those 241 wells were in the Desdemona district? A. Of my own personal knowledge I do not know where those 241 were.

Q. Then your statement made on yesterday that they were in the Desdemona district you now wish to recall; is that correct? A. No, I do not, Mr. Davis.

Q. You do not wish to recall it. Do you wish to reassert it? A. Well, in this paragraph 2 of the hypothetical question given me, it says you may assume the following facts as correct:

"That Petitioner's Exhibit 69 shows 241 wells in Eastland, Stephens, Comanche and Erath Counties produced 13,167,495 barrels of oil prior to July 16, 1919, and were then producing at the rate of 74,600 barrels of oil daily."

I have on here Exhibits 68 and 69, then a line drawn through 68. I do not know why that was.

Mr. Davis: I do not either.

*By Mr. Davis.*

Q. Is that your answer to my present question? A. I will have to get back to the question again.

(The question was thereupon read as follows by the reporter:)

"Q. Then your statement made on yesterday that they were in the Desdemona district you now wish to recall, is that correct?" A. No, I do not, Mr. Davis.

"Q. You do not wish to recall it. Do you wish to reassert it?" A. I do not know what question there is to answer there.

*By Mr. Davis.*

Q. You cannot answer that? A. I do not know just what the question is. I do not get the meaning of it. It is one in a chain and I have not the complete chain in mind.

Q. I am afraid, Mr. Raricz, I cannot make it any plainer. What rate of decline did you deduce from the 241 wells in the Ranger district? A. On data I got from that exhibit.

Q. That is not what I asked you. I asked you what rate of decline you deduce from the 241 wells in the Ranger district. A. It gave me the basis for an estimate that I might reasonably get the bulk of the oil out of the wells on this property here within a period of about fourteen to twenty-four months.

Q. I ask you again what rate of decline do you deduce from the 241 wells in the Ranger district? A. I did not set them up as any decline curve.

Q. I thought you resorted to that in order to determine your rate of decline.

In my outline I stated that I took into consideration the rate of decline of the wells in planning a development program for this property, and my estimate of the amount of oil would be gotten and how quickly it would be gotten out was an estimate of fourteen and twenty-four months, based on the performance of these wells here. As to the rate of decline I deduced from the 241 wells in the Ranger district, I do not know how I can answer that any more clearly as to what I did for the purpose I used that particular table at that time and for that purpose. I observed on the table, Exhibit 69, 95 wells six months old had declined 80.4 per cent. That this would indicate the exhaustion of these wells in very much less than two years' time is not a fact to which I gave any consideration for the purpose I had in mind.

I gave consideration to the figure "14" at the bottom of the second column, age of wells in months, the figure at the bottom of the column "approximate percentage of decline," which shows 95.8, the figure 74,604, at the bottom of the column headed, "Daily present production—barrels," and to the very last figure on the last column, which is headed, "Total oil produced in barrels." I gave consideration to the figure "14," which indicated the age of the wells in months. That related to three wells as given on here. These three wells had declined 95.8 per cent. in fourteen months.

Q. They had began with an initial of 1,010 barrels and were at the end of fourteen months producing 43, is that correct? A. I am not interested in the daily initial. I was interested in the daily present production in barrels.

Q. If you were in search of the rate of decline how would you find it if you did not consider the daily initial and the present production? A. Mr. Davis, when I outlined the method of procedure, I used, first, I tried to set out the

most favorable acreage. Next, I tried to set out the average expectation per well and out of the performance of the 241 wells, which had ages of anywhere from one month to fourteen months, I got a figure of 13,167,495 barrels as the total production of those 241 wells, whether it was one month, whether the wells were one month old, or two or three or five, it did not make any difference, and I got a daily production in barrels of the 241 wells of 74,604 barrels and I am still not interested in the age of those individual wells.

Q. Will you tell me how after saying the daily present production gave you any light on the rate of decline, if that is all you were interested in? A. Again I state that the performance of the 241 wells—the composite performance—the composite performance of the 241 wells, of ages from anything from one month to fourteen months, produced a total of 13,167,495 barrels, and were still producing a daily present production of 74,604 barrels. That is a composite of 241 wells.

Q. What has that got to do with the rate of decline? A. Well, to me that figure there means in my estimate of about 250 wells here that I would get in about fourteen months' time out of 241 wells, just to use this table exactly as it is, that I would get 54,600 barrels per well out of these wells. In my estimate of the number of wells I would use in the 250, I would only have to drill nine more wells than shown on here. If these 241 wells gave that performance, my 250 wells would give a similar performance.

Q. Are you through? A. Yes, sir, if I have answered your question.

Q. Is it your opinion that in the answer you have just given you have told us anything at all about the rate of decline in this field? A. Well, to my mind that is the composite performance of 241 wells.

Q. I am asking you again, is there anything that you have now said that you regard as an exposition to the Board of the rate of decline of the wells in this field? A. Well, to my way of thinking, yes, sir.

On August 1, 1919, in the Desdemona Field oil was being produced from a horizon about 30 to 60 feet below the top of the lime. I think the geological name of the formation was Marble Falls. On most of the sand cards I estimated it was being produced from about 20 to 60 feet below the top of the Marble Falls. The average depth of the producing wells in that horizon was somewhere around 2700. I stated there was a possibility there might be drilling 3,000 to 5,000 feet below the surface. The wells might be driven below 2700 or 2800 feet. There was the possibility of recovery of oil in such wells. By August 1, 1919, I think there was some down to 3100 feet. Here is one 3,130 (indicating). As I recall, there were not any that went over 3200 feet. So far as I know, there had not been any production in these deeper sands. On April 1 the Herrington well had been driven down 3720 feet and the last showing of oil was at 3100. In the Desdemona Field in the vicinity of the Tex-Penn leases, the depth of the Ellenberger lime was 600 or 700 feet, or deeper. I do not know how many wells in this field had been drilled down to the Ellenberger sand by August 1, 1919. No doubt this one went down there. I do not think that at that time any oil had been discovered in the Ellenberger lime.

Q. Well, if you knew that there had been six wells in this immediate vicinity drilled to the Ellenberger lime prior to August 1, 1919, and all of them unproductive, would that modify your opinion as to the value of possible deeper drilling? A. May I ask the depth of the deepest of those wells?

Q. The deepest was 3723. A. Mr. Davis, possibly I did not give enough explanation yesterday when I went over this outline.

Q. Will you answer the question or would you mind answering the question, then giving your explanation? A. What is the question?

(The pending question was thereupon read by the reporter as follows:)

"Q. Well, if you knew that there had been six wells in this immediate vicinity drilled to the Ellenberger lime prior to August 1, 1919, and all of them unproductive, would that modify your opinion as to the value of possible deeper drilling?" A. No, it would not; no, sir.

The feasible drilling depth at that time was 5,000 feet. The deepest well was this 3,720-foot well. There was 1280 feet more of formation to be explored. Wherever the geologist finds a closed structure, as here, that area offers possibilities down to the total drillable depth. I would not presume to go out in the sticks somewhere and drill for oil down to 5,000 feet and value that acreage at a very high figure, but if I had a good geological structure, a dome or closed structure, I would value that acreage pretty highly.

I should say that that acreage on that structure, based on that possibility of deeper drilling, would have had a value of about $50 to $100 an acre. I assumed about 2,000 to 2,500 acres to be productive. That would account for $250,000 of the total value.

In 1919 among geologists the Ellenberger lime was considered to be the deadline. We have had the same situation in Oklahoma as to the top of the lime there, but somebody went into it one time and opened up what was called the Wilcox area. It was very productive. I was helped in my estimate of production by the fact that I had known wells in other areas and other States that produced as much or more than 60,000 barrels a well. It would not be a fair comparison to draw parallels between the wells

in this district and the wells, for instance, on the Pacific Coast and in California. In my estimate of this property, 251 wells to 2,000 acres, and 60,000 barrels per well, would have given an average production per acre of about 7,500 barrels. I am not speaking of the 241 wells in the Ranger district. I am down to this property. Under my estimated campaign I concluded that 2,000 to 2,500 acres the most favorable acreage here. That would have given an average per acre yield of 7,500 barrels, or, if the 2,500 acres produced the 15,000,000 barrels it would be 60,000 barrels per well. In the Crane County district in West Texas, in the Church Field and McElroy district, which is right in close proximity, the average production per acre had been 7,623 barrels. The Long Beach Field in California the average production per acre had been 272,694 barrels, but that is not comparable to this. The geological conditions are different; the sand conditions are different.

Q. It is true, is it not, that you cannot compare one district in point of yield with another unless you know all the attending circumstances? A. Well, it is geological circumstances, Mr. Davis.

Q. Very well, the attendant geology you must know if you are to make any comparison; is that right? A. Well, the geology in this district is so and this district is nearby, and it is so, and this one is so, and I think there is a pretty close comparison; at least, I would use one as a yardstick in making estimates regarding the others.

Q. In order to use it as a yardstick you must know that it is cut off the same piece, must you not? A. Mr. Davis, I think a geologist would understand it.

I feel perfectly warranted in comparison of my knowledge of the geology here, this and this (indicating)—comparing Desdemona—comparing Eastland and Stephens and Duke-Knoles, Comanche County area. I do not know how the Ranger and Desdemona Fields compare with each other in point of rapidity of decline.

In reaching my figure of 2,500 producing acres on the Tex-Penn leases, I set up the best possible contour map I could draw, based on the data, and I find within the 1350-foot contour as I have drawn it are the best wells; I also find wells outside of that line, but the best wells are inside. Based on the amount of this property within the 1350-foot contour gives me a figure. Then I stand off at a distance and look at this whole block of acreage, the production north, oil on the east, oil on the south, oil on the west, a line of offsetting dry holes on the west. And based on the regional structure, which is in a general north and south direction, it just occurs to me a fair estimate of the acreage here would be a slice right down through the heart of the Tex-Penn Duke-Knoles leases. Then, thirdly, we have a cluster of wells right here on the property. We have large wells north of the property; we have this cluster of wells right on the property. So it seems reasonable to me to assume other clusters of seven wells around on the Tex-Penn Duke-Knoles acreage.

Q. How many such clusters of Pleiades did you imagine in the Tex-Penn area? How many clusters is my question? A. I am going to divide 250 by 7.

Q. That is fair enough. Most anybody would estimate a value like that? A. About thirty-six clusters.

Q. How did you get your acreage? A. Then my estimate of the acreage is the composite of those three considerations.

Q. Well, how does that reach the figure of 2500? That is what I am trying to get to. Where does your mathematical figure of 2500 come from? A. Well, I just went through the mental processes in arriving at it.

Q. I know your mental processes, but I want the mathematics of it now. What is the computation which underlies your figure of 2500 acres? A. All right. No. 1, total of all the acreage inside this 1350-foot contour.

Q. Did you make such a computation? A. Yes, sir.

Q. What is the total acreage inside that contour? A. Shall we do it now?

Q. You said you had done it. A. I do not know what I have done with the figures. I will go over it again if you want to.

Q. If you have your figures there turn to them. What is the acreage inside that contour—what contour is this? A. The 1,350-foot contour.

Q. Now, look at your figures and tell us what your computation was of the acreage inside of the 1350-foot contour.

Mr. Foley: Have you anything more to say?

The Witness: With the possibility—I do not condemn anything to outside the 1400, which would include some slices here (indicating on map).

*By Mr. Davis.*

Q. What is the acreage according to your computation inside your 1350-foot contour? A. I think the figure I had was about 2000 or 2100 acres.

Q. Was that the result of the computation? A. It was done very hastily.

Q. Was it done at all? A. Yes, I went through it.

Q. Where did you get the additional outside of the 1350-foot contour? A. That is the sum total of three processes of reasoning.

Q. Oh, well, Mr. Ravicz— A. I do not presume to stand here and say this one acre has to be included and this one acre eliminated and that one acre included and that one acre eliminated.

Q. Of course, you are a scientific man and you know science depends upon more or less exact computations, does it not? A. Correct.

Q. Let me ask you again finally whether or not you made any mathematical computation of the location and acreage which constitutes your total of 2500 acres? A.

That is the estimate I arrived at after considering the three processes I have outlined.

Q. It is not the result of any acreage computation, is it? A. It is not the result of sitting down and figuring out—except in the case of the first one, based upon contours—all the others. No, I did not sit down and figure that out. I have not got exact enough data on which you could say this should be 1920 acres—I beg your pardon—whether this should be 2001 acres or 2499 acres.

Q. Unless you have that exact acreage it is impossible, is it not, for you to compute your exact oil expectancy of production because one of the factors by which you reach your aggregate production is the acreage, is it not? A. It is the estimate of the acreage and estimate of the average well based on the data I have to work with.

Q. You would use those two to produce your total expected production of oil? A. That is right.

Q. You would use your total expected production of oil to fix your final value, is that not true? A. I base my estimate on that.

Q. Then if your initial estimate as to the acreage is not fixed and certain, the same thing must be true of your final estimate of value, is that not true? A. Well, Mr. Davis, the oil business, especially in the production of oil, is not an exact science. It is a speculative enterprise and there are certain factors which must be weighed to the best of one's ability and to the best of one's experience, and that is what I have done here.

Q. But you have reached as the result a mathematical figure, have you not? A. That is right, based on that consideration and the other considerations which I outlined yesterday.

Q. And if that mathematical figure is based upon uncertainties, the figure itself must be uncertain, must it not? A. No, I do not think so.

Q. You think you can take a group of uncertainties and from those deduce a mathematical certainty, do you? A. I am not talking in terms of mathematics.

Q. But you are. You are talking in terms of dollars and cents and that is a highly mathematical matter. A. Mr. Davis, I bought oil property—I have never been on the selling side—I bought oil properties and I have used this method, subject to variations, depending on the property, in arriving at what I considered a fair market value of the property I want to buy or was trying to buy. I go through the same mental process in arriving at the fair market value of this property and I arrive at $12,000,000.

Q. So you told us. You said that the oil business is a highly speculative business. A. Well, I have always found it so.

Q. It is a business of great hazard, is it not? A. Yes, sir; it is hazardous. I thought speculative would cover it.

Q. A man who enters the oil business takes large chances of gain and loss? A. That is true, and he has got to have large returns for the risks he takes.

Q. Do you think that would have been true of anybody who bought these Tex-Penn leases? A. Yes, sir; I considered that, the same mental process that I used everywhere, and I estimated that there would be a profit of about $7,000,000 out of—that is, if $12,000,000 was paid for the property.

Q. And an equal prospective loss? A. Mr. Davis, in the considerations I outlined I stated one of the considerations was the possibility of losing all or any part of the capital put into an enterprise to develop and exploit this property. You got to take that into consideration. I might lose everything I put in there.

Q. On that chance you might lose every nickel? A. Oh, yes.

Q. Well, now, on yesterday you made this statement— * * * "It did not seem possible to me that anyone start-

ing out to develop this property as it appears there could possibly lose his money or any part of his money, and, as I see it, here was the chance of making a profit of something close to $7,000,000." Do you still stand by that statement? A. Yes, sir; the way I interpreted it and gave it.

Q. How do you reconcile it with the statement you have just made that if you bought this property you might have lost every nickel? A. I considered the possibility of losing my money, but, Mr. Davis, here is what I regarded as a piece of proven oil property, oil on the north, oil around here, oil east and oil south.

Q. Well, I am asking you now to reconcile the statement you made on yesterday which I have just read to you and the statement you just made on the stand five minutes ago that there is a chance that anybody who bought this property might lose every nickel. I confront you with these two statements and I ask you to reconcile them or to choose between them and tell us on which you predicate your testimony. A. Well, I have lost the two questions. Let us get back to them.

The Reporter: What do you want read, Mr. Witness?

The Witness: I do not know what I want read. I do not know.

Mr. Davis: Read him the last question.

(The pending question was thereupon read by the reporter as above recorded.)

The Witness: I still don't get it. One of the factors of my long list of considerations is this possibility of losing my money. As I viewed the property it did not seem possible that I should lose my money.

The Presiding Member: Do you understand the question?

The Witness: I think so, your Honor.

The Presiding Member: Please answer it, then.

The Witness: Read that question again.

(The record was read as follows:)

"Q. Well, I am asking you now to reconcile the statement you made on yesterday which I have just read to you and the statement you just made on the stand five minutes ago that there is a chance that anybody who bought this property might lose every nickel. I confront you with those two statements and I ask you to reconcile them or to choose between them and tell us on which you predicate your testimony." A. You will have to read that again. Will you read it again?

(The question next above quoted was read to the witness by the reporter.)

Mr. Foley: I think perhaps the witness really wants to have repeated what he said yesterday. May we have that?

Mr. Davis: I will repeat that.

The Presiding Member: Can the reporter read the record back there?

(The record was read as follows by the reporter:)

"Q. Page 2645, top of the page. I read: 'It did not seem possible to me that anyone starting out to develop this property as it appears there could possibly lose his money or any part of his money and, as I see it, here was the chance of making a profit of something close to $7,000,000.' Do you still stand by that statement? A. Yes, sir; the way I interpreted it and gave it.

"Q. How do you reconcile it with the statement you have just made that if you bought this property you might have lost every nickel? A. I considered the possibility of losing my money, but, Mr. Davis, here is what I regarded

as a piece of proven oil property, oil on the north, oil around here, oil east and oil south.

"Q. Well, I am asking you now to reconcile the statement you made on yesterday which I have just read to you and the statement you just made on the stand five minutes ago that there is a chance that anybody who bought this property might lose every nickel. I confront you with these two statements and ask you to reconcile or to choose between them and tell us on which you predicate your testimony." A. I will stand by the statement of yesterday.

I was in Desdemona the first time in April, 1919. Five times between then and November, 1919, I was in the general Eastland, Stephens, Desdemona, Comanche County area as indicated on that map. Between April and November, 1919, inclusive, I was in what was known as the Desdemona oil field at least twice. The last time I was there was the latter part of September or the first of October. The purpose of that visit was to look at the Hogg Creek Oil Company's property. I do not think I was there again in November. As nearly as I can recall, I was at Ranger. That is where we always went to. I think I was at Cisco. That is in Ranger. The center of the information I wanted was at Dallas and Fort Worth, some Ranger. At Dallas, Fort Worth, or Cisco, I got all the information about the Desdemona Field. Between April, 1919, and October, 1919, there seemed to be a lot of activity over that whole Ranger, Breckenridge, Caddo, Duke-Knoles district. There had been a lot of wells drilled in the meantime. I cannot tell you that there were fifty drilling rigs working in April and a hundred in October, or vice versa, or whether there was any such big difference in there. In the meantime there had been a lot of development work. On my October visit to the Desdemona Field I know that quite a number of wells within a radius of a mile or more around the town site of Desdemona had

stopped flowing. By October I should say that the interest in the field was still there, but the optimism had to a considerable extent disappeared and the eagerness had been curtailed. I did not learn in October, 1919, what, if anything, had happened to the wells on the Tex-Penn leases.

If any buyer had acted on my advice and paid $12,000,000 for the Tex-Penn leases and proceeded to develop them by drilling of the 250 wells or a lesser number, it is clear, in the light of subsequent events, that he would have had a substantial loss. I don't suppose he would have lost his shirt. He would have quit. You do not go on drilling dry holes for the fun of it. It is very doubtful whether he would have gotten his $12,000,000 back. I do not know how much he would have gotten back. I have not studied that question from the hindsight viewpoint. I had a hindsight viewpoint of it in October, 1919. On that date I would have reduced that $12,000,000 figure rather substantially. At least a year or two years afterwards, at least a year anyway, it was considered that the whole district was pretty much of a disappointment. It was a disappointment.

I think I noticed one exhibit showing a total of about forty wells drilled by Transcontinental on the Tex-Penn leases. That is twenty-eight drilled after August 1, plus the twelve that were already there, Exhibit 47. I do not know it to be a fact that not one of the twenty-eight wells proved to be a profitable well. I did not examine the figures. Anything that did not pertain to August 1 or prior thereto I passed over very hastily.

*Redirect examination.*

I wish to explain my statement at page 2673, to the effect that you could not ascertain the fair market value of a share of United States Steel Corporation's stock by

appraising its tangible and intangible assets, adding 10 per cent. for its going quality, and dividing that by the number of outstanding shares. I don't think they are quite comparable, so many other factors enter into United States Steel that don't enter into Transcontinental; United States Steel has a long record of earnings, good will, established customers for its products, there is the stock market record of the shares and you have the largest steel corporation in the United States, as contrasted with a newly organized company, just assembled and ready to get started. The circumstance that in the case of Transcontinental I am valuing 1,007,834 shares and in the case of United States Steel I am valuing one share, makes a great deal of difference, I should say; in one case a large block and in the other case a single share. If you set up a scheme of valuation and include in that all of the tangibles and intangibles you should arrive at the fair market value. If you include all the tangibles and intangibles, it is not necessary also to add a percentage, such as 10 per cent., because that percentage would already be included in the intangibles. The figure included for intangibles depends on just what you are starting out to value. That is a matter of experience.

In stating that I placed a fair market value upon something which, presumably, is a disadvantage, I meant that on account of that restriction the owner of the block of stock might miss a good opportunity to sell, because there was a big market for oil securities at that time, and I think that is a matter that would have to be considered in the valuation of that block of stock. It decreases the value of the stock.

When I testified that some of the 241 wells in Exhibit 69 were within the Desdemona district—the Desdemona leases—I should have said "Desdemona, Ranger, Caddo and Breckenridge." Possibly I am using the word "district" too loosely. The district is Stephens, Eastland and

part of Comanche and Erath Counties. That is the district and the pools are the Ranger, Breckenridge, Caddo and Desdemona. When I said "Desdemona district" I meant this district right in through here, including Stephens, Eastland and a part of Comanche and a part of Erath Counties. In arriving at the value of these Duke-Knoles Tex-Penn leases I made use of the rate of decline of the wells, as shown on Exhibit 69, only in so far as it would help me in a development campaign for this property. I used that exhibit for the purpose of determining the time within which the wells would be exhausted. I did not use the rate of decline for any other purpose.

I do not know whether there had been any change in the conditions of the Duke-Knoles leases on October 1, 1919, as against August 1, 1919. The fair market value as of August 1 is based on all the known facts up to and including that date. If you wanted the value as of October 1 that would be something different, and would include what had occurred in the meantime.

In arriving at the value of these leases as of August 1, 1919, I have not considered the circumstances and facts occurring after that date. I ascertained no subsequent event to August 1. This is the fair market value of $12,000,000 on August 1. This is just like setting up a balance sheet as of one date and it is the condition of the company as of December 31, 1930, and you take another balance sheet as of December 31, 1931. In the second balance sheet you have all the facts in that next year. But the facts in the succeeding year don't affect this balance sheet back here, which is based on what happened before this date. I have tried to set up what I call a balance sheet as of August 1, or the fair market value as of that date.

NORMAN MERRIMAN, a witness called on behalf of respondent, was duly sworn, and testified as follows:

*Direct examination.*

My name is Norman Merriman; my address is 60 Beaver Street, New York. I am an economist affiliated with Fenner, Beane & Ungerleider.

I graduated from Lehigh University in 1905 with the degree of Bachelor of Arts. Thereafter I took a one-year postgraduate course at Michigan University.

Between 1909 and 1920 I was, successively, customers' man and manager for Sheldon & Sheldon, a securities and brokerage concern; manager for its successor, Sheldon, Morgan & Company, a partner in Noyes, Merriman & Company, securities dealers; a distributor of securities for White & Company; distributor of securities and later an executive of Breitung & Company, and, first, manager, and, upon its incorporation, vice-president of Bolster & Company, dealers in securities. From 1920 to 1927 I engaged on my own account in the wholesaling of security issues. In 1927 I entered the employ of Samuel Underleider & Company to organize a securities investigation department; I later assumed the duty of secretary economist for an investment trust organized by that firm. Since the firm of Fenner, Beane & Ungerleider was formed in December, 1931, I have acted in an advisory capacity to the partners with respect to commitments of their clients and general policies of the firm as to dealings in the securities field. I have occasionally written articles on evaluation of securities for financial publications and have occasionally made examinations of oil securities. In 1928 I made studies of the oil situation which were quoted in the national press and oil journals of the United States.

*By Mr. Foley.*

Q. Mr. Merriman, I am about to put a hypothetical question to you, as follows:

* * * * * * *

You may assume, for the purpose of your testimony, the following facts:

The Transcontinental Oil Company was organized under the laws of Delaware on June 28, 1919, with a capital stock of 2,000,000 shares of common stock of no par value. It was authorized by its charter to produce, refine, sell and distribute petroleum and its products, and to purchase, lease and exploit lands, or the oil, gas or mineral rights, in the lands, for the purpose of producing oil and gas therefrom. It disposed of 750,000 shares of its stock to Pritchitt & Company, bankers of New York, and E. W. Clark & Company, bankers of Philadelphia, for the aggregate of $20,225,000, this aggregate being made up as follows: 500,000 shares at $40 a share, 25,000 shares given to the bankers as commission, and the bankers were given an option to purchase 225,000 shares at $1 a share, which option was subsequently exercised; that is, subsequent to August 1, 1919.

You may assume that the Transcontinental Oil Company was bound to use the entire proceeds of $20,000,000, the same being the proceeds of sale of 500,000 shares of stock to the banker at $40 a share, as working capital, and in the acquisition of property.

The Transcontinental Oil Company, for a portion of the cash so received and the balance of its stock acquired all of the assets of the Tex-Penn Oil Company, which included a one-fourth working interest in the Duke-Knoles leases, a five-eighths overriding royalty in the same property, all of the remaining assets of the Tex-Penn Oil Company, all of the assets and liabilities of the Pittsburgh-Texas Oil & Gas Company, all of the assets of the River-

side Western Oil Company and its subsidiary, and all of the assets of the Riverside Eastern Oil Company and its subsidiaries. The consideration paid for these assets is shown in the following table: The Tex-Penn Oil Company and the owners of the five-eighths overriding royalty in the Duke-Knoles leases received $9,000,000 in cash and 1,007,834 shares of stock of the Transcontinental Oil Company. When I speak of the stock hereafter in this tabulation, it refers to the stock of the Transcontinental Oil Company.

The Pittsburgh-Texas Oil & Gas Company received 158,833 shares of stock; the Riverside Western Oil Company received $1,250,000 in cash and 41,667 shares of stock; the Riverside Eastern Oil Company received $1,250,000 and 41,666 shares of stock.

Now, this item of $9,000,000 cash, paid to the owners of the five-eighths overriding royalty and to the Tex-Penn Oil Company, was paid as follows:

M. L. Benedum, $1,368,750; F. B. Parriott, $2,184,375; Kirkland, $2,184,375; Lantz, $1,456,250; Wrather, $1,456,250; and the Tex-Penn Oil Company, $350,000.

In accordance with a contract between Benedum, Parriott and Holliday of July 24, 1919, and in accordance with the offer made by Holliday to the Tex-Penn Oil Company, and accepted by that company, Holliday instructed the Transcontinental Oil Company to pay to the Tex-Penn Oil Company $350,000 cash and to deliver to Benedum and Parriott, as sole stockholders of the Tex-Penn Oil Company, 1,007,834 shares of Transcontinental Oil Company stock. The Tex-Penn Oil Company had previously, by resolution of its board of directors, directed the Transcontinental Oil Company to pay the $350,000 into the Tex-Penn Oil Company's treasury and to issue the stock directly to Benedum and Parriott. Of the stock so received, Benedum received 683,037.123 shares and Parriott 324,796.875 shares. Benedum and Parriott agreed that under

no circumstances were the shares of Transcontinental Oil Company stock to be sold or parted with in any way by them during the life of the underwriting syndicate. The syndicate by its terms would have expired on October 18, 1919, but the syndicate managers were given the right to extend it for a period of ninety days in addition, or until January 16, 1920. As a matter of fact, the syndicate terminated on January 8, 1920.

That the balance sheet of the Transcontinental Oil Company as of August 1, 1919, is shown on Petitioner's Exhibit 59 and headed "B," August 1, 1919.

For the purpose of your testimony, you may disregard the amount shown as the asset item, "Property acquired at organization," and the liability account of "Capital Surplus" in the balance sheet. You may also assume that the item "Bankers' subscription to stock, $9,377,115," is entirely made up of an unpaid portion of the proceeds of the sale of Transcontinental Oil Company stock to the bankers, E. W. Clark and Pritchitt & Company, and that this item was an account receivable worth 100 cents on the dollar.

The current asset and liability accounts are self-explanatory, and you may accept them as correct.

"Properties acquired at organization" consisted of the following:

(1) The Duke-Knoles leases, which you may assume had a value of $12,000,000.

(2) Certain wholly undeveloped oil properties in Texas, Louisiana and South America, having an aggregate value of $221,500 on August 1, 1919.

(3) From the Riverside Eastern Oil Company and its three subsidiaries, the Transcontinental Oil Company acquired ten casing-head gasoline plants, two blending stations, two compounding plants, thirteen distributing sta-

tions, rolling stock, equipment, etc., all in West Virginia and Ohio, three small producing oil and gas leases in Ohio and West Virginia, and various casing-head gas purchase contracts. The company obtained the gas needed in its gasoline manufacturing operations from these gas purchase contracts. The assets acquired constituted all of the assets of the Riverside Eastern Oil Company and its three subsidiaries. You have before you Petitioner's Exhibit 40, listing the physical assets acquired with a brief description of their locations, character and the cost of acquisition less depreciation. You also have before you Petitioner's Exhibit 42, showing the book profits or losses realized by the Riverside Eastern Oil Company and its three subsidiaries for the years 1916, 1917, 1918 and seven months of 1919, before depreciation and after depreciation, depreciation being computed at rates used by the Treasury Department in auditing the company's current returns, such statements showing average yearly net earnings over the period of operation of $27,876.

* * * * * * *

From the Riverside Western Oil Company and its subsidiary, the Transcontinental Oil Company acquired seven casing-head gasoline plants and two blending stations located in Oklahoma, and one compounding plant and six distributing stations located principally in Nebraska, Iowa and South Dakota, and various casing-head gas purchase contracts. The Riverside Western Oil Company obtained the gas needed in its gasoline manufacturing operations under these contracts. You have before you Petitioner's Exhibit 44, listing the physical assets acquired from the Riverside Western Oil Company, with a brief description of their location, character, and cost of acquisition less depreciation. You also have before you Petitioner's Exhibit 45, showing the book profits of the Riverside Western Oil Company and its subsidiary during the years 1913,

1914, 1915, 1916 and 1917 and 1918, and seven months of 1919, before depreciation and after depreciation, depreciation being computed at rates used by the Treasury Department in auditing the company's current returns. The average net profits over the period in question, after deducting depreciation, were $45,200.

The Transcontinental Oil Company acquired from the Pittsburgh-Texas Oil & Gas Company, the Boynton Refinery and related facilities, located in Boynton, Oklahoma, which you may assume had a value of $500,000. In addition to the Boynton Refinery, the Transcontinental Oil Company acquired from the Pittsburgh-Texas Oil & Gas Company certain assets and current liabilities on or about August 1, 1919, which you may assume are reflected in balance sheet B as of August 1, 1919, Petitioner's Exhibit 59. In addition to the above listed assets, the Transcontinental Oil Company acquired on or before August 1, 1919, from the Pittsburgh-Texas Oil & Gas Company certain undeveloped oil leases in Texas, and certain developed leases in Oklahoma, having an aggregate value of $238,500 on August 1, 1919.

During the three months from May 1 to July 31, 1919, the operations of the Pittsburgh-Texas Oil & Gas Company resulted in a net loss of $63,575.42 after proper deductions for depreciation.

In the light of the facts I have asked you to assume, Mr. Merriman, I am going to ask you what was the fair market value on August 1, 1919, of a block of 1,007,834 shares of the stock of the Transcontinental Oil Company, the 1,007,834 shares being the shares of stock held by Benedum and Parriott. Now, by "fair market value" I mean the price at which a seller willing but not compelled to sell and a buyer willing but not compelled to buy, both of whom are informed regarding the property, will deal. This fair market value must be ascertained with fair certainty and it must be realizable within a reasonable time.

considering the character of the property which is to be valued. I will ask you this: Are the facts which I have given you sufficient to permit you to form an opinion of the value of the stock in question as of August 1, 1919? A. Yes, taken into consideration with my own knowledge of the conditions of the security market and the industry as of the period involved.

Q. What, in your opinion, was the fair market value of this particular block of stock as of August 1, 1919?

Mr. Davis: I object on the ground that the facts given in the hypothetical question are incomplete and in part inconsistent with the record; on the further ground that the definition of fair market value given to the witness is also incomplete.

The Presiding Member: I will overrule the objection.

Mr. Davis: I do not want the Court to be misled by the generality of my objection, particularly as to the facts in reference to fair market value. I do not recall that in stating the definition to the witness he was at any time admonished it meant a fair market value then presently realizable in cash or its equivalent.

Mr. Foley: I will amend my question, Mr. Merriman, so as to include in the definition of fair market value a price realizable in cash or its equivalent.

The Witness: Am I to answer now?

Mr. Foley: Yes.

The Presiding Member: Overruled.

Mr. Davis: Exception to the ruling.

The Witness: $10 a share.

*By Mr. Foley.*

Q. Now, I am going to put the question to you in a slightly different form. In the first question I stated that

Benedum and Parriott agreed with the bankers that under no circumstances were the shares of the Transcontinental Oil Company to be sold or parted with in any way by them during the life of the underwriting syndicate. Now I want to vary that question by substituting for the portion I have indicated this: You are to assume that the restrictive agreement would permit only of a present sale of the stock, the stock to be delivered after the termination of the syndicate operation, the purchaser meanwhile to be the beneficial owner of the stock. What would be the fair market value, in your opinion, of the 1,007,834 shares in question under that hypothesis?

Mr. Davis: I object on the ground that there are no facts in the record for the hypothesis.

The Presiding Member: Objection overruled.

Mr. Davis: That is the same objection I think your Honor passed on yesterday.

The Presiding Member: As I understand the rule, if there is nothing in the record as a fact basis a question cannot be answered, but if there is sufficient under different theories, then you cannot rule in the same strict manner.

Mr. Davis: Exception.

Mr. Foley: Do you have the question in mind?

The Witness: May I ask the reporter to read that question once more?

(The pending question was thereupon read by the reporter as above recorded.)

The Witness: I think it might vary slightly from the figure previously stated; perhaps 25 cents a share.

*By Mr. Foley.*

Q. Now, Mr. Merriman, will you show us how you arrive at the values which you have given in answer to the two questions?

The valuation of securities of this type takes into consideration certain fundamental factors. The first is the earnings trend of the industry in which the company, the securities of which are to be valued, is engaged; second, the general economic situation as reflected in commodity and security price levels at the time of the determination of the value; third, the management of the enterprise; fourth, the general financial position of the company as revealed by an examination of its assets for the purpose of determining whether it is adequately or inadequately equipped to meet competitive conditions which may arise in the industry; fifth, the relation of the price of the securities to be valued to the market values of securities of other companies engaged in the same general industry; sixth, the relationship of the demonstrated earnings of the company to those of other companies in the same industry, and of indicated future earnings with respect to the indicated future earnings of other companies in the same industry. The assets of the company should also be related to the assets of the other companies in the same general industry to determine the reasonableness of the investment in assets with respect to competitive securities or investment opportunities.

To develop that in detail requires an examination of the general trend of the oil industry as of the period in question. For the purpose of bringing out certain facts as they existed at that time and drawing the necessary deductions to determine whether a given industry has an upward or downward trend of earnings, I have prepared a few charts.

There were then offered in evidence three charts which were marked Respondent's Exhibits DM, DN and DO for Identification.*

Although not so stated on the charts, they refer to oil statistics of the United States, not the world, as of the

* Later admitted (see folder of Unprinted Exhibits).

period involved or preceding the date of this valuation. At that time the United States was producing, as I remember it, approximately 70 per cent. of all the production in the world, and the rest went to so many different places that it was a minor factor in determining the price level of oil products in the United States.

The figures of this chart (Exhibit DM) are taken from United States Geological Survey publications. The particular publication, I think, was entitled "Petroleum" and the date was 1922, but this data was all available as of the date of valuation.

I call your attention to this blue line of production. This period begins in 1910 and is carried up to the end of 1918. That is almost a straight line upward trend, which starts in 1910 at approximately 210,000,000 barrels and reaches a figure in 1918 of 356,000,000 barrels, an increase of 75 per cent. or more.

The next curve is the green line of stocks of crude oil in storage in the United States at the refinery, at a tank farm, in the hands of the producer on his property and also in the hands of the pipe line companies. The increase of 75 per cent. in the production would lead one to expect an increase in stocks on hand, because such a large increase in use generally necessitates a greater storage. This was the period during which the automobile began to become a real factor in American life and American industry. At this time the number of automobiles registered in the United States was growing very rapidly and that accounted for the necessity of increased production. It should also have accounted for a substantial increase in stocks, because of the necessity of increased numbers of refinery plants scattered all over the United States and the necessity of an increased supply in the hands of those companies for economical operation at the greater rate of consumption. However, this green curve starts in 1910 with 131,000,000 barrels. Up to 1916 it climbs rather

slowly relative to production. In 1915 the stocks reached a peak of 194,000,000 barrels, due partly to a piling of supplies that would normally have been exported but could not be on account of the disturbance to shipping conditions which occurred during the war. From December, 1915, to December, 1918, stocks declined steadily from 194,000,000 barrels to 128,000,000 barrels, approximately 35 per cent. during that period. At July, 1919, the stocks had risen 4,500,000 barrels.

The third curve, the red line, is the value at the wells. This value rose rather steadily until 1913, declined rather noticeably during the period 1914-1915, partly due to the piling up of stocks. There was a little too much in sight. From then until the end of 1918 the value increased vastly more rapidly than production. The value for 1910 was approximately $128,000,000. At the end of 1915 it was $179,000,000, and in 1918, approximately $704,000,000, an increase in the period from 1915 of over $500,000,000—in excess of 250 per cent. This red line represents the value of the output for the particular year—the price paid at the well.

The blue line on the chart marked Exhibit DN is from the United States Geological Survey. It represents the number of days' supply of crude oil on hand in the country from 1913 to 1918, so far as the Government was able to ascertain at the end of each year. This was determined by dividing the indicated rate of consumption of the last day of the year into the number of barrels on hand. At the beginning in 1913 it was 169 days, in 1915 it rose to a high of 241 days, and by 1918 had fallen to 113 days. Granting an increase in efficiency in operation so that a smaller supply would satisfy conditions prevailing in the industry, still a decrease of over 50 per cent. in three years is strongly suggestive of an extremely rapid withdrawal of oil from storage due to much greater consumption than there was production.

The most potent evidence to that effect is the green curve. This is the Bureau of Labor Statistics crude oil price index for Oklahoma and Kansas oil for the years 1913 to 1918, inclusive. It is my recollection that that was termed Mid-Continent crude and the North Texas oil produced from these properties was of the same general grade and the same price. This line moved from 100 in 1913 down to a low of 64 in 1915, then starts upward until it reaches a high of 234. This chart is based on a percentage relationship, so if the price were $1 at the beginning of the curve, the low in 1915 would be 64 cents, and the high in 1918 would be $2.34. The curve is relative, not absolute. However, its behavior if plotted on a general scale would be the same.

The green curve is almost an inverse correlation of curve No. 1. If you turned it upside down it would almost exactly coincide with the other curve. It is not a 100 per cent. correlation, but it is rather marked. That is very significant for the reason that when oil has to be drawn out of storage to such an extent that it depletes the supply on hand, the seller sees so much demand he can get a higher price and his attitude is that of being a reluctant seller, whereas the man who must have the oil has to go in the open market and bid for it. As the supply gets scarcer the price goes up. It is the working of the law of supply and demand. The supply was decreasing, the demand was increasing, the price was going up very rapidly.

Another influence in that price movement which we cannot neglect in considering this situation from an economic standpoint is the relationship of the price movement of crude oil as shown in this chart to the wholesale commodity price index in general. If all commodities are rising at a given time, and it is a matter of common knowledge that the war brought about a very great increase in the price of commodities in general, you would

expect crude oil to rise along with these other commodities as a rather natural thing; but it is perfectly obvious to me that the excess movement of this line over the commodity price index has a significance. Beginning at 100 in 1913 it moves up to 157 at the end of 1918. The gap between these two lines measures a situation of rapidly increasing profits for the organization engaged in that industry. Roughly, the movement of the wholesale commodity price index reflects general costs of an industry. That is, for whatever goods they buy they must pay the prevailing wholesale market prices. The goods they have to sell they sell in the open market. Crude oil is one of the goods an oil producer has to sell. These (indicating the red line) are the things he has to buy. That does not include labor, of course. I did not put labor on the chart, because I believe it wrong to put more than three curves on one chart. However, broadly speaking, the entire history of prices shows that labor moves upward more slowly than the wholesale commodity price index or moves downward more slowly. It takes a longer time to make the human readjustment than it does the price readjustment and a labor curve superimposed upon this would show, I am quite certain, a lag in the advances. It would ultimately get up to about the same price level, but at the period in question it would have been lower relatively than the commodity price index, so that the cost of goods and services he had to buy would have been relatively lower than the price he would receive for the goods he had to sell.

Chart DO is compiled from data available from the United States census reports, and shows value of refined products and refinery investment. It begins in 1899 and continues to the end of 1919. The 1919 information appearing on that chart would not have been available in just that form as of this period. A man engaged in the pricing of oil securities, as of that period, would have had

to make up his own mind from his knowledge of the conditions in the industry just how fast these two curves had moved upward. A fair guide to that could have been obtained by any well posted investment banker or any well posted oil man interested in examining into the situation. These two curves behave almost exactly the same, except that the red curve showing the value of refined products moves up more rapidly in the five-year period from 1914 to 1919. The blue line, represents the value of investments in oil refineries in the United States during the period in question.

It is interesting to note that during the first ten years there was a slow, steady growth in the amount of refinery investment. There was no sensational growth at all. In my opinion that is due to the fact that the automobile was pretty young in 1909, roads were not very good, automobiles were not too reliable, and there was not too much demand created for oil as of that period. Beginning in 1909 the advance of the curves becomes accelerated until the 1914 period, and at the end of the 1919 period we find a perfectly tremendous advance: The figures for refinery investments start in 1899. In 1904 that shows $131,000,000; in 1909, $182,000,000; in 1914, $325,000,000, which is somewhere around an 80 per cent. advance. In 1919, the next period, they are $1,117,000,000, an increase of more than three times the 1914 figure. Of course, there was no such growth in wealth and income of the United States in the period in question, so far as my study has indicated. The value of refined products shown by this red line and its behaviorism in the first fifteen years of this period is practically identical with the behaviorism of the blue curve representing refinery investment. The value of refined products has gone very much higher relatively at this time than the value of the refinery investment. In other words, it was possible to put money to work and get a value out of these refined products that presumably

should have been higher than was possible in this period. In other words, to recover a greater amount of interest on the money invested in this period than you would have expected during this period.

To me the most significant thing in this entire exhibit is the fact that the refinery investment had to go up like this; the consumption has gone up in this fashion and the stocks of crude oil have gone down. That makes as solid a base for a further advance in the price of crude oil in the period yet to come as could be demonstrated statistically.

At the period in question it was common belief in quite a few circles in the United States that oil reserves of this country were approaching exhaustion. I do not recall all the articles I read on it, but I heard such discussion and sat in on conferences with people who had large investments in the oil industry as of that time. In 1900 oil wells were drilled rarely deeper than 1500 feet, by 1919 they were being drilled as deep as 4,000 feet. The opinion was that the earth's crust had been explored to a pretty satisfactory extent, and that there was danger of exhaustion of supplies obtainable in this fashion. Computations were made and experiments conducted to indicate that the shale deposits of Utah and Colorado could be profitably and economically worked for crude oil if the prices reached and remained at a figure of around $4 a barrel for any particular length of time. It was conceivable that the top price of crude oil at that time might be $4 a barrel. This situation of increasing demand and decreasing supply and conceivable shortage I do not mean to stress. I do not mean to stress this question of exhaustion of supply too much, because there was a very great deal of debate in oil circles on that question, and much of the publicity that people saw in the newspapers was fostered by people who had second grade oil stocks to sell, but there was serious question, as I have indicated, and that led oil companies

in general to step out all over the world in search of additional reserves of crude oil, because thus huge refinery investment had to be protected by adequate reserves of crude oil, and the refinery company that had materially increased its investment at the time and did not have adequate supplies would presumably be at a material economic disadvantage with other companies that had adequate reserves.

Until the development of the automobile, gasoline could not be marketed very advantageously. As the automobile developed the demand for gasoline increased tremendously, and in 1905 to 1906 the price went above the price of kerosene. Then refiners used every endeavor to increase gasoline output through refining methods. Until about 1913 practically all gasoline production in the United States was in skimming or topping plants, the process consisting of the application of heat to the distilling and taking off the lighter vapors. About 1913, Standard Oil Company of Indiana began to do what is called the cracking of oil. This in time permitted the production of vastly more gasoline from a barrel of crude oil than was theretofore possible. In 1914, Standard Oil Company of Indiana licensed the use of patents of this cracking process which they controlled to a number of other leading oil companies. These other oil companies began to install, on a modest scale, cracking units in their refining plants. There were a great many refining plants built during the period 1914 to 1919 that were not cracking plants, and I have been informed that a number of these were not readily adaptable for the addition of Burton process units. The impression that existed in 1919, so far as my recollection goes, suggested the possibility that at least the same modest proportion of the recent refining equipment of other oil companies was becoming obsolete at a more than normally rapid rate, with the result that it is quite possible that a new company starting in the oil business at this

period with its capital free to engage in all branches of the business, would have a modest advantage over some of its competitors from the standpoint of modernness of refining equipment.

As far as I could judge it, and I think it was practically the unanimous opinion of the banking fraternity in 1919, so far as I came in contact with them in a limited way, in the oil industry one could expect more than normal profits on the capital invested for perhaps as long as it was reasonable to project earnings estimates. There was no indication of a stoppage of the increase in the use of automobiles, and there was a pretty definite reason to believe that the use of automobiles and the consumption of gasoline would increase steadily, and that refining profits would at least be stabilized at a reasonably high level.

The considerations I have detailed in connection with the three charts would have had a very great effect on the market for oil securities. This situation of increased profits resulted in abnormally large dividends from leading oil companies during the period in question, so far as my recollection goes. A number of the Standard Oil Companies had taken on separate corporate identities so far as the public was concerned, had declared some tremendous stock dividends, and there were several of them that declared them every couple of years in the amount of 50 or 100 per cent. I am stating that primarily from recollection, although I have looked over some of the dividend declarations of those companies, and they were very striking. In addition, we had the development of new oil companies during this period that had previously been unknown, for example, the tremendous growth of the Sinclair group. The founder, I think, was practically unknown in the oil business in 1910. By 1919 he had put together a tremendous oil structure engaged in all branches of the industry on a very large scale. The Cities Service Company which had been engaged to a modest extent in

the natural gas business in the Mid-Continent district in Kansas had drilled for natural gas and encountered a tremendous quantity of oil. By 1916 or 1917 it had become about the sixth largest producer of crude oil in the United States. Skelly Oil Company and Cosden & Company (now the Mid-Continent Petroleum Company), are other examples of new big companies that came into being. The Humble Oil & Refining Company had a $500,000 capitalization in 1911 and by the middle of 1919 had grown to where Standard Oil Company of New Jersey was willing to pay $17,000,000 for a half interest. The purchase was made by Walter C. Teagell personally, but as he happened to be president of the Standard Oil Company of New Jersey, everybody assumed it was for that corporation's interest.

The large profits apparently earned by the major companies in the industry—the large earnings and profits that had been made by stockholders in the various oil company shares, naturally whetted the appetite of the public in general for oil securities, and the investment banking fraternity rather naturally at that period tended to supply that appetite, because that is a habit they have.

The next point is the general economic and security outlook. Investment bankers try to determine whether the country is in an era of inflation or of deflation, whether commodity or security prices are too high or too low. If it is a general era of severe inflation it is obvious that the commodity prices will go downward, and the danger of buying goods on a market that is too high must necessarily be avoided, if you can judge it.

I don't believe that so far as my judgment and the judgment of Wall Street as of that period is concerned, that was entirely conclusive as to the economic security outlook in that particular period. We were in an era of some commodity price inflation. That was a period of some security inflation, the degree of which was difficult

to measure as the earnings of many of the major companies indicated no great degree of inflation, but there could have been in any one's mind.

There were two points of view common on the street. The first was that the readjustment necessary as the result of the war would bring about a decreased purchasing power on the part of the nations whose capital had been wasted in the war, and consequently reduce the buying of goods and reduce business activity. The second was that the stoppage of most industries, except those relating to war, throughout a large part of the civilized world during the war had piled up a huge demand for goods, which would be satisfied by the issuance of huge credits in one form or another, so that we could look forward to a period of considerable industrial activity.

Now, I think that situation would have reduced the number of possible buyers, because those who believed we were in a period approaching deflation would have been careful about buying any kind of securities. On the other hand, those who were optimistic about the outlook would have been glad to undertake it, because, in general, I would say that the great activities of the investment banking houses in the issuance of securities at that time was the best gauge as to what the market appraisal of that risk was. The market's appraisal could conceivably have been wrong, but I think it was the best gauge of that period.

As of that time, one could not be certain that there was an undue risk, and there might have been more than a normal chance of profit as the result of this situation of exhausted stocks of goods all over the world.

The next point is that of management. If you cannot have good management for an enterprise you do not want to buy its securities; it is even more important than the assets, because good management may overcome a disadvantageous asset position; whereas bad management can easily wreck an advantageous asset position. That, of

course, is simply a personal view. The management of this company, as far as I can judge, was largely dependent upon Mr. M. L. Benedum, who, so far as I know, at the time had the reputation of a shrewd and successful operator in oil properties and a very substantial money maker.

The next major part is the general financial position of the company with respect to its ability to meet such conditions as might arise in the industry. An investment banker employs engineers, accountants, appraisers and attorneys, and so on, to examine into every phase of the security of the company which it is proposed to finance. These he weighs himself.

In attempting to arrive at the fair market value of these securities I must rely upon the valuation given in the hypothetical question of $12,000,000 for the Duke-Knoles leases as being a reasonable valuation that an engineer, employed by an investment banker, would have allotted to that organization. I must regard the other stipulated assets in the same fashion. The company starts out with assets of $12,000,000 in the form of these particular leases. It has $460,000 in the form of leases on totally undeveloped or very slightly developed properties which it had acquired from the Pittsburgh-Texas Company and Tex-Penn Oil Company, and has $500,000 in the form of a refinery, giving a total of $12,960,000. It has cash and accounts receivable which have a fair value, according to the balance sheet, of about $9,161,000. I think that is over and above the amount of the current liabilities. In other words, its net working capital is a little over $9,000,000, of which the major portion is in the form of presumably quick accounts receivable worth 100 cents on the dollar. Adding that to the other values as specified we have a total very slightly in excess of $22,000,000 of tangible assets, plus the properties acquired through the Riverside Eastern and the Riverside Western Oil Companies.

The hypothetical question states that those two concerns have a combined average annual earning power of about $65,000 for the three-year period preceding the date of this valuation. The exhibit in connection with that indicates that the earnings of those two companies were definitely downward, they were going down hill; I think one of them was actually in the red in the period in question, and the other one, if it was in the black, it was only to a small extent. There was a very marked discrepancy between the indications of value in this exhibit and the prices at which the bankers permitted these companies to go into the consolidation. The bankers permitted to be paid for these two properties $2,500,000 and about 83,000 shares of stock; if the bankers considered the stock to be worth about what they paid for it, that would give us a valuation of about $4,500,000, or something like that, for those properties. I can't reconcile those two opposite points of view. The earning trend of the companies is so bad that in the absence of more satisfactory evidence I would have to disregard any consideration of these properties, except in so far as it would contribute a certain amount of good will and going value, certain distributive facilities for a company engaged in the oil business and a certain personnel trained in the manufacture of casing-head gasoline. I have definitely discarded these two items from consideration, because I believe that, in the absence of other evidence, a prudent investment banker would be obliged to do it because of the uncertainty involved. That gives us, then, a total valuation of a trifle over $22,000,000, disregarding the Riverside Eastern and Riverside Western assets. Now, those assets may be, and I think should be, treated as a factor of safety in the situation, rather than being attributed, in the absence of more positive evidence, to any very definite degree of value. That gives us a picture of an oil structure, comparatively new in the business, with oil properties that have produced around 400,000 or 420,

000 barrels of oil in the preceding seven or eight months, with a refinery of uncertain value because shown, in the earlier stages, to have lost a modest amount of money; it has additional acreage selected after presumably careful supervision, because as I remember Mr. Benedum's reputation of that period, it was that of a successful developer of wildcat acreage. So there was at least reason to expect the company could have a safety factor, with respect to the question of developing an adequate oil reserve over a period of time.

We have a cash item of a little over $9,000,000 and quick accounts receivable. That should, I think, put this company in position to engage in whatever branch, or in all the branches, of the oil industry deemed advisable by its officers. That was an important possession by this company as of that period. Most oil companies had grown so rapidly that they had a financial problem in front of them. This was true even of the major companies, which were definitely in need of additional capital, and some of the major companies had to go to investment bankers to get it on such terms as they were required to pay. Here was a company that needed no immediate financing; in fact, was in a position to go out and buy oil properties, marketing stations, build refineries on a modest scale, and still have a reasonable quantity of working capital for the conduct of its business. So, in general, its financial position, I think, was somewhat more advantageous than the bulk of the oil companies as of its period. Its tangible asset position, of course, was not nearly so good, because its assets were not invested in such a manner as to indicate income return on a very large scale.

We come to the question of how to treat these assets with respect to the fair market value. They totaled about $22,000,000, and 1,000,000 shares of stock represented slightly over 50 per cent. interest in the company. Assuming that there had been no restrictive agreement against

their sale, what would a willing buyer have been willing to pay for such block of securities.

I think Wall Street has always and will always evaluate on the basis of what one would have to pay for similar investment in similar securities at that approximate time. If a man or investment banking house wanted to go into the oil business at that time it would have to provide capital, assemble the properties and assemble an organization. The latter two steps would require time, the other the organization and expenditure of a substantial sum of money. An investment banking house does not, as a general principle, wish to go into such business. Nevertheless, this was a period in which the investment banking houses were interested in having affiliations in the oil industry. One of the most important sources of profit to an investment banker is his clientele of corporations which look to him for financing; and the ownership of a controlling interest in such a company, or the possession of a contract which gives the banker first right to undertake any financing for that company, is an asset that has a very definite good will value. So, to determine the fair value of these assets we have to determine a fair premium to add for good will value. My own approach to the problem—I don't say that that figure is too scientific; it is a matter of judgment. All of these operations are matters of judgment. I would say that an investment banker at that period would have added about two to three million dollars as the value of that good will going value item. I preferably take the lower of the two figures. On that basis we would have approximately $24,000,000 of tangibles and intangibles, which would mean $12 or $12.50 a share for the stock, unrestricted, in the fashion that bankers usually make such purchases.

So far as one can judge from an examination of the books or statement to the stockholders of the leading oil companies of that period, it was difficult to buy interests

in going oil corporations, even very young and unseasoned oil companies, at figures that did not represent a substantial increase over the value of their assets. I think it would have been very difficult to buy them at as low a figure as 10 per cent. appreciation above their asset value. Even if one attempted to check it by the interest return available on the stocks of the prime companies of the oil industry as of that period, one finds that they would be selling to yield a very low income return, 4 per cent., 5 per cent., some as high as 6 and 7 per cent., on the total indicated earnings, so far as one can see, on the prices which one had to pay for the shares in the open market. That same total indicates the earnings available for a good many of the larger oil companies at that period, but they did not publish regular earnings statements. Some of them did not even publish a regular financial statement or balance sheet.

It was a matter of estimate to determine what those companies were earning, but we tried it for a long period of time. They had been selling at prices that yielded absurdly small amounts in cash dividends. If one took the stock dividends that came out from time to time into consideration that was another matter; that was the taxable income; and one had to take into consideration the fact that the stock had advanced very steadily for a considerable period of time; in fact, the advances had, in many cases, been quite sensational.

I think, in a new enterprise, it is fairly obvious that money should earn, under skilled management and favorable auspices, substantially more than it was possible to secure on capital invested in the leading oil companies as of that period.

I admit freely, it is not too satisfactory a check, but one which tends to establish the reasonableness, or a distinctly conservative basis, in my judgment, upon the valuation of these assets. So that about $12 a share I

would consider the value of this stock, without any restriction, in other words, if the company could have stepped out and sold it to-morrow, and I presume it could have found a buyer, of course.

In Wall Street, restrictions against the sale of securities of that kind are almost invariable. An investment banker does not wish his operations to be too unfavorable in the minds of the owners of the securities. He does not wish to have his market flooded with stocks or bonds that will hamper him in the marketing of his securities. So it is quite common to tie up in escrow, or through a pledge of some character, the stock owned by what you might call an inside group, for the protection of the investment banker. What he is interested in is the protection of his market. If a buyer is found for the shares that will not damage the investment banker I think it quite unlikely that he would raise any objection to the sale of the shares in spite of the restriction; assuming, of course, that he has the same protection during his market operations as as he has had in the past. It is conceivable that a buyer could be located in circumstances that would help the market: that is, it might add a further element of strength to the personnel, or might add a further element of strength because a new banking connection stepped into the picture.

The very existence of the restriction, which we must admit, is necessarily an advantage to the buyer: the fact that he is not free to step out and sell them when and as he wants to, but can only sell them with the consent of the third parties in the transaction during the period in question is an advantage to the buyer, and I think the buyer would determine that advantage by attempting to ascertain the fair income return that he would probably secure on his capital during the presumptive life of the restriction, or such additional period as he might need to continue to hold the securities if market conditions were unfavorable at the time the restriction expired.

*By Mr. Foley.*

Q. Let me ask you a question there, Mr. Merriman. Do you mean to say that it was an advantage or disadvantage to the buyer to have this restriction?

Mr. Davis: I object to it as leading.

The Presiding Member: The objection will be overruled.

Mr. Davis: An exception.

A. Perhaps I did not make myself clear. The buyer is able to make a better deal in price, because of the restriction. From that advantage, from that standpoint, rather, I meant that it was an advantage to the buyer. It is a disadvantage to the buyer from a standpoint that it limits his freedom of action in connection with the disposal of the shares.

I have been dealing with this from the standpoint of the investment banker. He is engaged not in investing his funds but in turning over his money. His business is in essence the business of buying goods and selling them at a profit. It is quite conceivable that conditions might not have been too good at the end of the five and one-half months and he might have had to hold them for some additional time. What is the earning power of the investment banker's capital for the period he might have to hold it? His business is more or less a business of feast or famine. At one time, like 1919, the earning power, because of the ability to turn over the capital fairly frequently, was rather large. So, considering the fact that the well indicated earning power of an investment banker's capital at that time was rather high, I had put an arbitrary 20 per cent. interest rate; that is, if the investment banker bought them at $10, I assume he would expect to receive $12, which would give him 20 per cent. earning on his capital, merely for the use of his capital during that period.

Perhaps before discussing the question of deduction for the restriction I should have discussed the dangers and safeguards entering into consideration of fair market value as I interpret it.

There are several dangers in this situation. The first is the fact that half of the total assets are invested in one block of leases in one oil field. They have been appraised as having a fair value of $12,000,000, but may prove much more or less valuable. No one can definitely look into the future enough, so far as investment in this business is concerned, to say positively and exactly what they are going to produce. Consequently, there is an added risk factor to be taken into consideration. The second risk factor is in connection with the management. The industry has been growing rapidly, and, under circumstances of that kind, it tends to be difficult to find good, capable, experienced men to take charge of the various phases of the business and it is to be presumed that it will take a little bit longer to build up the same operating organization than would be the case if the industry had not grown so fast. It is also to be presumed that such an organization as is developed in the next year or so is going to make some mistakes and these mistakes will presumably cost the company some money. In the third place, so far as I know, the record of the management of the company has been chiefly that of successful developers, or successful locators of new sources of oil production. That is a very important factor in the oil industry, and particularly so to a company which is almost solely engaged in production. But, so far as I know, they were not men who had been trained as operators in the integrated oil industry, such as this was designed to be. There is the fourth factor or aspect that some portion of the management may not have been good. The facts are not clear in the record as given me, but the record of the Riverside Eastern and Western Companies was not at all satisfac-

tory and was a reason for considering the definite risk in this transaction.

The first safeguard is that of setting a price somewhat below the asset value of the shares, which in itself would permit of some loss before your asset position, as represented by the purchase made by a prospective buyer, would be impaired. Second, there is the same safeguard that, so far as I can gauge the possibility of making similar investments in the oil industry as of that period, you would probably have had to pay a still higher proportion for the good will or going value that you had in this enterprise. Third, there is a possibility of underrating the value of the Riverside Eastern and Western properties, as strongly suggested by the price which the bankers permitted to be paid, presumably after some reasonable investigation of the situation. Fourth, the possibility of profits from the utilization of natural gas resources on this or any other property the company might own.

A chart was thereupon offered and marked Respondent's Exhibit DP for Identification.*

This is a chart of the natural gasoline production in the United States from 1915 to 1919. The movement of the initial base of both these pieces of data are so different that I thought it would be better to reduce it to percentage of the 1915 date, which would give the relative percentage movement. The source is the United States Geological Survey figures in 1915, which is the first year I have been able to locate that the United States Geological Survey reported the volume or value of natural gasoline produced in the United States, The output was 65,000,000 gallons. Natural gasoline had been produced in moderate quantities before that time, but the business was largely experimental in character because the total output in 1915 was only $5,100,000 in value.

*Later admitted in evidence (see folder of Unprinted Exhibits).

The blue line represents the rate of increase of output. In 1915 it increased roughly 30 per cent., in 1916 over 100 per cent., in 1917 another 40 or 30 per cent., and the next year another 20 or 25 per cent. It had risen from 65,000,000 gallons in 1915 to 340,000,000 gallons in a period of four years.

The value of the output is shown by the red line, and that had risen from $5,100,000 to $14,300,000 the first year, to $40,000,000 in 1916, and $50,000,000 by the end of 1918. This data was not available at the valuation period, so presumably it should not be taken into consideration, but it shows a tremendous increase in the value of the output, and a tremendous increase in the production by 1918. That is my general recollection.

In connection with an oil syndicate in Kentucky, we brought in a couple of small gas wells, and we made a little study to see whether it would be advisable to raise money necessary to put up some casing-head gasoline plants; and it is my recollection that by 1918 about 50 per cent. of the output of natural gas in the United States was being treated in gasoline extraction plants, either of the compression or absorption type.

The fact that this company had substantial reserves of gas indicated a safeguard of some consequence because of that situation. It is not necessarily meant that that eliminated all risk, but an industry growing like that and having two subsidiaries engaged in the natural gas industry, unless there was something very radically wrong with the entire Riverside Eastern and Riverside Western organizations, one would think that, with the possibility of the sound management, such as this company presumably expected to apply, and under the good auspices of the company, to capitalize the value of these natural gas assets.

At this point, upon Mr. Davis' request, it was agreed that further testimony of Mr. Merriman be deferred until a later session. Thereafter the following testimony was given.

Without objection, the four graphs identified and referred to by the witness as Respondent's Exhibits DM, DN, DO and DP were admitted (see Folder of Unprinted Exhibits).

On page 2747 I stated that I had been in the business of wholesaling securities for seven years. I wish to state that I was in business for myself for a period of seven years, but during the latter three years my activities in the wholesaling of securities practically ceased and I was dealing in securities and real estate for my own account during that period.

On page 2797 of the transcript the paragraph beginning "Even if one attempted to check it by the interest return" is very obscure. The earnings of the major oil companies as of that period were not too readily ascertainable because a good many did not publish detailed statements of income and one had to deduce what the earnings were from statements made by a small proportion. We also had the guide of the Federal income and excess profits taxes and dividends paid. Dividends paid as of that period generally ranged in the leading companies from 3 to 3½ per cent. of the market value at which the stocks were selling. The indications were that the companies were earning a substantially greater amount than that which they were putting back into the business, but the indications so far as I have been able to deduce them from some little study of the subject were that the companies were earning from 7 to 8 per cent. on the market price of the securities at that time. Most of the leading companies at that time had only common stock outstanding, so that the earnings would have been 7 to 8 per cent. of the market price of a common share, and the same thing would have held true for the entire capital.

At page 2792 of the transcript, beginning, "The next step in this process," and ending, "to a very considerable extent," I believe I was trying to show that Transcontinental

was a company in a development stage; that is, it was not an integrated structure that had a proven earning power, but it had gone some distance in assembling a series of units which would presumably under satisfactory management have the possibility of developing into an important integrated structure; and for that purpose I outlined the fact that the company had producing properties which had shown a total production of approximately 420,000 barrels of oil in the preceding nine months, I think it was. They had a refinery of a value of $500,000, which, however, had not proven substantial earning capacity, since it had operated at a loss during the preceding few months, and it also had substantial possible reserves in the form of wildcat acreage that had been selected under careful supervision. I perhaps neglected to bring out the fact that it had at least the nucleus of a distributing and marketing organization acquired through the Riverside Eastern and Western.

At page 2808 of the record, beginning, "It is not necessarily meant," and ending, "to capitalize the value of these natural gas assets," I believe I simply meant to say that in view of the upward earning trend of the natural gasoline industry the possession of certain plant organization by this company with natural gas reserves which Riverside Eastern and Riverside Western presumably had under contract, and the possession of certain natural gas reserves indicated on the Tex-Penn property, it should have been able to capitalize the value of those tangible and intangible assets in such fashion as to realize some fair amount of earning power from the properties in question.

*Cross-examination.*

In fixing the basis for my valuation I disregarded entirely the two Riverside companies. In the light of the information given in the hypothetical question and the

exhibits I found it impossible to predicate a fair market value as to the assets of those companies. Having reached an aggregate of $22,121,000 for the tangible assets, I increased that by a factor of 10 per cent., which I called going-concern value, giving an aggregate of from $24,000,000 to $25,000,000.

As to the basis on which I reached my factor of 10 per cent. as going concern value, I have made a fairly careful study of other oil companies as of that period. Since being retained on this case I have looked into the leading oil companies, together with a number of minor oil companies, with a view to ascertaining whether any of them were then selling in the open market at a price that did not set a good will or going value on the assets as far as they could be ascertained from the balance sheets of the period. I thought it was proper to add some good will or going value to the tangible assets. There was a large and very widespread interest in oil securities among the investment banking fraternity. There was a belief that the oil industry would increase materially in value over years to come, and investment bankers, while not interested in promotions, would presumably consider the creation of a new oil company of this kind would add going value to the assets—that is, if the fair market value of all the assets of a new company is $22,000,000, the cost of assemblage of such assets and such organization would be immaterial—and reconciling the two points of view—that is, open market value of other oil securities and the cost of creation of such an enterprise—I arrive at what is an admittedly arbitrary valuation of 10 per cent., or thereabouts, for the going value of this concern. The 10 per cent. is a matter of judgment.

Having increased the aggregate value of the assets by 10 per cent., I then divide by 2,000,000, which gives a per share value of $12 to $12.50. Except for the factor of 10 per cent., that is the amount which would have been

allotted to each share if the company had immediately liquidated its assets at the hypothetical value and divided them among its shareholders. I then considered the restrictive agreement. I may have inverted the statement in my testimony. My measure was that I believed a buyer would ask a profit of about 20 per cent. for tying up his capital for the uncertain period of time that would be necessary before he could liquidate these shares.

Q. That estimate was predicated on the theory that if he could liquidate his shares instanter upon their receipt he could earn 20 per cent. on his capital during the period of the restriction through other channels; is that correct? A. During a period that might perhaps run as long as a year. It might run longer than a year and it might run only for the period of the restriction. That is, I did not assume he would believe he could liquidate the shares instantly upon the expiration of the restriction because it was conceivable that market conditions would not be very satisfactory at that time and I thought that he would have to allow some additional period as a factor of safety.

Q. You understood from the—I am not sure it was in the hypothetical question, but have you not understood from the exhibit that the period of restriction was from the 1st day of August, 1919, to the 8th day of January, 1920? A. I understand that that was the time that the syndicate expired; yes, sir.

Q. And, as a matter of fact, instead of discounting $12 or $12.50 by 20 per cent., you added 20 per cent. to the $10 to make up the $12; is that not correct? A. I was figuring the earning power that an investment banker would expect to receive upon his capital during the period. That is how I arrived at the——

Q. Then you estimated an earning power of 20 per cent. of what figure? A. Of the figure of $10.

Q. It is really an addendum to the $10 to reach the $12, rather than a discount of the $12 to reach the $10; is

that not correct? A. Well, it happens that on the $12 to $12.50 figure I specified they work out about the same.

Q. That, you think, was the earning value on the base price of $10 per share between August 1 and January 8; is that correct? A. No. I think that is the profit a buyer would have felt—I think that is the discount that a buyer would have felt he would be able to exact because of the restriction, and in order to arrive at what he would try to exact in the illustration he would estimate that was the earning power on his capital for such a length of time as he felt it might be necessary to tie up his money. That might be for a period considerably longer than January 8 or January 16, when I think the syndicate technically expired.

Q. Why? A. Because market conditions might not be favorable at the expiration of the syndicate.

Q. In other words, a buyer of this stock on the 1st day of August, 1919, would not have known when the evil effect of the restriction would have expired; is that it? A. I would not say evil effect of the restriction. I would say he would not have known what the general market conditions would be six months from the date of his initial purchase. They might be better; they might be worse. He would not have had absolute certainty in his appraisal of that risk; consequently he would ask for an insurance premium of some fair size.

Q. Suppose that the restriction period would have run a year; what effect would that have on your 20 per cent. factor? A. I think it would have increased it.

Q. For two years it would have increased it still more? A. A moderately additional amount.

Q. Then, at the same rate, in two and a half years the discount would have amounted to the entire principal, would it not? A. I think that is a question for actuarial computation. It is not quite correct.

Q. Roughly? A. No, I think not.

Q. I was figuring 20 per cent. in six months and I should say at that rate in two and a half years it would increase to the full 100 per cent. A. I did not say 20 per cent. in six months. I said that was my judgment of the figure at which an investment banker would have assumed his earning power for some period of time that might run as long as a year.

Q. Well, that figure, like the 10 per cent., is an arbitrary figure? A. Perfectly arbitrary. One has to apply some sort of a yardstick.

Q. As a matter of fact, an investment banker, where shares are divided, as they were here, into free shares and restricted shares, always takes the free shares, does he not? A. I do not believe he always does.

Q. Do you know of any case in which an investment banker has taken the restrictive shares? A. Yes, sir.

Q. What case? A. An investment trust of which I was secretary in 1930 acquired, I believe, several blocks of restricted stock that were restricted from sale for a period of time—not very large blocks. It was the Ungerleider Trust.

Q. That corporation had a rather disastrous experience, had it not? A. In relation to other investment trusts, I think it had a rather brilliant experience.

Q. Well, leaving out the relation, as a matter of fact it had a rather unhappy experience, did it not? A. I think happiness is a relative term.

Q. Was it a successful enterprise? A. I think with one exception it was one of the most successful investment trusts floated during 1929.

Q. That is not the question I asked you. I asked you if it was a successful enterprise? A. It was successful in the sense that it safeguarded the interest of the investors' capital a good deal better than about 99 per cent. of the investment trusts and 99 per cent. of the investors themselves.

Q. It was finally taken over by the Atlas Trust, was it not? A. They thought it was a good buy.

Q. And I have no doubt the underwriters thought it was a good sell. A. They were not in position to dictate whether the Atlas people would buy it or not. They were not the holders of the majority of the stock. They merely had a management contract. They owned certain stock of the company.

I do not know of any case where a company organized by investment bankers took the restricted shares or any part of them instead of taking the free shares. As an alternative, I have seen them take both.

The basis of my computation of value is a mathematical division of all assets by the number of shares. I assumed a value for the Tex-Penn leases of $12,000,000. I did not undertake to value that item and took the value as put to me by the hypothesis. If that valuation were incorrect my figures would be changed to a considerable extent as those figures would be changed. From the testimony and exhibits I have learned that the Tex-Penn leases were the principal sources of crude upon which Transcontinental could rely. If the Tex-Penn leases were of no real value at all as a source of crude supply, it certainly would alter the value of the shares. The question as to the value to be put upon those shares if the Tex-Penn leases were of no value as a source of supply is capable of being answered. I should like a little time to check it. In other words, if those Tex-Penn leases were of no value, of no fair market value, I should want a little bit of time to check what I believe would be the fair premium that would be added to a company that possessed almost solely cash. This would be a break-down value except for the fact the company would have these additional assets of wildcat leases and the Boynton Refinery, Riverside Eastern and Western and would have approximately $9,000,000 of net working capital to put into any branch of the oil industry that its

officers and directors felt was advisable. As this hypothetical question is given to me, no one could be sure which branch of the oil industry this company was going to concentrate on or whether it was going to undertake to build a general integrated enterprise starting from production and ending up with the filling station. As of that period the company would have had a going concern value if it had no proven resources of its own. I say "as of that period" because that was a period in which the oil industry, so far as I came in contact with it, and the investment banker and the public were all convinced that money invested in the oil industry under reasonable management auspices would bring more than a normal return on the capital. The public was very enthusiastic about oil shares at the time. The essence of my reply is there was sound reason for believing that capital in the oil industry as of that period would return more than a normal rate of earnings on the money.

*By Mr. Davis.*

Q. Would you have regarded a company well founded which had nothing but a refinery, one that had shown very doubtful earnings, that had the two Riverside companies and had bankers' commitments to put up money for working capital and nothing else?

Mr. Foley: Does that eliminate the wildcat acreage or not?

Mr. Davis: You may put in the wildcat acreage if you want to.

A. I believe such a company at that time would have sold at a premium above the assets. * * *

The common stock of the Simms Petroleum Company, floated just before the Transcontinental, was brought out and sold to the public at about $31 a share. It had nothing

at all but cash and wildcat leases. The officers and directors were men of the very strongest reputation in the industry. The company was a pure prospect from start to finish and I do not think it produced any oil of any consequence for a couple of years, but I may be wrong as to the subsequent history. The stock was then selling at a very substantial premium above the price that the bankers had paid. The syndicate had been dissolved within a week or two weeks after the stock was offered for public subscription and the company had cash and wildcat leases.

Such a company as described to me above, without a reliable source of crude supply, has a purely speculative value. I believe the market ascertains that value every day. I am relying on the market as it exists from time to time. I think it is impossible to secure a fair market value without the evidence of market. By market I mean actual sales of comparable property or substantial bids and offers of comparable property in a natural market place. The natural market place for most securities is Wall Street and its lesser reproductions throughout the United States. In the absence of such market sales on the New York Stock Exchange or the New York Curb to fix with reasonable certainty the fair market value of such a company, one would have to fall back on the market for individual assets as indicated in the place that those assets would usually be bought and sold. In other words, that would be a breakdown of the assets and the prorated distribution of them among the shareholders.

I believe Mr. M. L. Benedum was the largest stockholder of Transcontinental on August 1, 1919, and I believe that he either was or it had been announced that he would become chairman of the board of directors. I drew that fact from either the listing statements—the application which listed the shares on the New York Stock Exchange, or from the Wall Street Journal as of some date in July, or from Mr. Parriott's letter to the bankers accompanying

the syndicate agreement. I am not certain whether I drew that from anything in the record. May I see Mr. Parriott's letter to the bankers?

The Witness: Does not Mr. Parriott's letter show that he was to be chairman?

Mr. Davis: You are quite right.

In my estimate of the skill of the management, in addition to Mr. Benedum, I believe—in fact, I am quite sure that as of the period of this quotation I had heard of one of the other officers of the company as a man of rather unusual ability as evidenced by the record, and that was Mr. Neal, or Mr. O'Neill. I think he came into the organization by way of Pittsburgh-Texas. Eliminating anything I had heard regarding any of the other executives of the company, I regarded it as one of the Benedum-Trees operations and I had the usual type of information that we have in our circles regarding Mr. Benedum's reputation.

With regard to the charts marked Exhibits DM to DP, inclusive, showing a tremendous upcurve in the value of oil production at the wells, price of crude, value of refined products, and the percentage of 1915 value of natural gasoline during the years 1914 to 1919, there was an artificial cause operating during those years to increase the demand for oil and the prices paid for it. There was certainly an additional demand for oil created as the result of the war.

I would not say that the war did not have an influence in increasing the demand for oil and gasoline in the years 1914, 1915 and 1916. On the other hand, in 1918 and perhaps for some portion of 1917 the war may directly have had an influence in reducing the consumption because the bulk of the manufacturing resources of the country were pretty well commandeered by the Government and there had been, particularly in 1918, a slowing down in the

output of automobiles. I have here a table of the registration of passenger cars and trucks from 1895 to 1918, inclusive. That shows at the end of 1914 there were 1,625,000 passenger cars and 85,600 trucks. At the end of 1918 there were 5,621,000 passenger cars and 525,000 trucks. I think the development of the automobile was probably twenty times the influence that the war was.

I have here the data as to exports of oil and gasoline during that period. It is my very clear recollection that the disturbance to shipping conditions resulting from German submarine operations tended to reduce the exports of oil and gasoline from the United States and Mexico during the early portion of the war. During the war this country's imports of crude oil increased much more rapidly than exports. By 1918 the exports had increased only approximately 300,000 barrels from the 1913 figures, whereas our imports had increased approximately 20,000,000 barrels, with an increase in exports of 1,100,000 barrels and in imports of 15,000,000 barrels for 1919. The official figures of exports of crude oil do not agree with the pamphlet entitled, "Oil Securities," written in 1920 by Mr. Van Tuyl, professor of geology, Colorado School of Mines, in which it is stated: "Long before the United States entered the conflict American oil was playing an important part in the European struggle. Over 80 per cent. of the Allied petroleum requirements were supplied from the United States." The official figures indicate that the war consumption of crude oil and the shipment of crude oils from the United States to all parts of the world during the war period were no greater than prior to that time. I am quite sure that includes the bunkering of vessels in United States ports. I think the war had an influence. I won't dispute that for a moment. I think the war had brought a very positive stimulus to the automobile industry in the United States as a result of increasing the prices that were received for all taxable profits in the United

States, so that the profit of the farmer, the manufacturer and the merchant was increased and enabled them to buy more automobiles and therefore consume more oil. From that standpoint I think the war had a definite effect.

My statistics were obtained from "Petroleum in 1919-1921," by G. B. Richardson. It is a publication of the Department of the Interior, United States Geological Survey, and is Bulletin No. 2-31.

It would not be in the least unfair to describe as a "petroleum boom" the petroleum situation as exhibited by the sharpness of the curve in my charts.

In my valuation I did not rely on any demonstrated earnings of the company and I had no dividend record to go on.

*Redirect examination.*

Because there are no actual sales of a security, it does not follow that it has no fair market value. It may still have a fair market value. That is dependent on the factors which I outlined in my method of valuation of these securities.

* * * * * * *

Mr. Fullerton: The respondent offers in evidence a tabular exhibit, which is merely those instruments from what has been known as the Gay-Wigsall list of those instruments which are referred to in the depositions. There is included on this list four instruments which were not on the Gay-Wigsall list, in reference to which we offer certified copies of the instruments themselves. This is merely for the purpose of supplementing the depositions by the——

Mr. Angell: I do not dispute the accuracy of these figures. This purports to be, as I understand it, a tabulation of those transactions occurring in the Desdemona

Field which were included in a large and voluminous exhibit carrying the prices paid, which were stricken from the record. This exhibit incorporates only those instruments with respect to which there was oral testimony concerning the price paid. We do not dispute the accuracy of the exhibits, but we do object on the score these isolated transactions as they are listed here, and as they were reflected in the oral testimony, are not comparable and are wholly immaterial to the issues in this trial. My associate suggests in addition that it appeared from the deposition from which these figures were taken that the witness did not have the instrument before him showing the consideration, nor did he testify of his own knowledge that the consideration here listed was the actual consideration. He merely testified the consideration was that which was shown in the deed.

Mr. Fullerton: We are prepared to put Mr. Kent on the stand to show that the instrument listed on this exhibit covers exactly the same acreage as the witness described in the deposition and placed on the KK-1 map, but we understood that point would be waived.

Mr. Adams: That is correct.

Mr. Fullerton: The tabular exhibit and the four deeds are offered in evidence.

The Presiding Member: This is a mere summary, you may say, of what appears in the testimony, is it not?

Mr. Angell: Yes, sir; that is as I understand it.

The Presiding Member: Just put in this form for convenience?

Mr. Fullerton: Yes, and to supplement testimony of the witnesses on deposition that if he did not remember the consideration, the consideration was as shown in the instrument itself.

Member Van Fossan: Did he testify to the effect that this consideration was as shown in the exhibit?

Mr. Fullerton: Yes, sir.

Member Van Fossan: In the deeds?

Mr. Fullerton: Yes, sir.

Member Van Fossan: Or is this offered in proof of a primary fact? Is it merely supplementary and confirmatory of what is already in evidence?

Mr. Fullerton: It is proof of the primary fact in this way, that in several cases the witness could not give the exact date and in several cases he could not give the exact amount of consideration, but he did say that the date and the consideration correctly appeared in the instrument of transfer. Now, this is the instrument of transfer or the data from which counsel admits to be correct.

Mr. Angell: There is an additional primary fact which the respondent desires to prove by this exhibit, as I understand it. He put his witness on in certain instances and examined the witness as to the transaction. The witness has testified to the transaction, but when it came to the consideration paid the witness could not remember what the consideration paid was. The witness did testify, however, that the correct consideration was the consideration appearing in the deed. Respondent comes forward with the deed and says the consideration in the deed is thus and so. We think he has not connected up the two for the purpose of proving the ultimate fact.

Mr. Fullerton: Does counsel admit that the area covered by the instrument listed is the same area to which the witness testified and which they located on the map KK-1-A?

Mr. Angell: We will concede that the tabulation is correct in so far as the location of the acreage is concerned and the extent of the acreage as testified to by the witnesses. The witnesses, however, were not shown the deeds. The witness simply testified first that he could not remember what the consideration was; second, that whatever the consideration was it was the consideration stated in the deed. I do not believe that is connected up.

Mr. Fullerton: I believe in each case the witness also located the land on the map.

Mr. Angell: That is correct.

The Presiding Member: We will receive the exhibit and overrule the objection.

The document so offered and received in evidence was marked Respondent's Exhibit DQ (see Folder of Unprinted Exhibits).

* * * * * * *

Mr. Angell: I have a very minor correction in the record to make. On Monday the Government offered a tabulation, Exhibit DQ, which set forth considerations for certain transactions which had occurred concerning the matter. I made objection to the admission of it. The objection was overruled and the exhibit received. I noted an exception, but the exception was not entered in the record. If I may ask that to be corrected——

The Presiding Member: Very well.

Without objection there was received in evidence Joint Exhibit KK-1-A, which was the map used in the course of taking the deposition testimony of the witnesses.

Offer of Stipulation No. 13 re: second Hogg Creek Transaction.

Mr. Fullerton: Now, may I read the third paragraph of the stipulation entered into between counsel.

In accordance with the suggestion of the Board we have stipulated the facts concerning this sale of the stock of the Hogg Creek Oil Company to the Magnolia Petroleum Company in November, 1919. I will read the first two paragraphs of the stipulation:

"It is hereby stipulated by and between the parties hereto that if T. M. Dees and L. S. Sinclair were called to the stand they would testify (as they did in their depositions taken in this cause) to the transactions hereinafter stated in this stipulation, and that this stipulation may

be offered in evidence by the respondent for the purpose, and for the purpose only, of proving that there was a market for leases aggregating in area 4,400 acres in the Desdemona Field subsequent to August 1, 1919, and for the purpose of corroborating the testimony of the respondent's opinion witnesses that such a market did exist after August 1, 1919; that petitioner may raise any objection to such offer that could have been raised to the depositions of T. M. Dees and L. S. Sinclair and exhibits attached thereto."

Following that is a statement of the facts which appear in those depositions. It is a very abbreviated statement.

Mr. Angell: You better read it.

Mr. Fullerton: Do you wish me to read it?

Mr. Angell: I think so.

"It is hereby stipulated if T. M. Dees and L. S. Sinclair were called as witnesses they would testify that on November 24, 1919, the Magnolia Petroleum Company purchased for $6,025,000 the entire stock (consisting of six hundred shares) of the Hogg Creek Oil Company, an association under agreement of trust, from the stockholders of the latter company pursuant to an agreement so to do, which said agreement contained, among others, the following provision, viz.:

'In case you fail to get all the stock in hand and ready for delivery within thirty days, Magnolia Petroleum Company shall have the option to cancel its obligation to purchase the stock.

'It is understood, however, that if you are unable, after diligent effort, to deliver all of the stock, Magnolia Petroleum Company will purchase all of the physical properties and assets and rights of every nature of the Hogg Creek Oil Company as they exist of this date, less necessary

current expenses paid in operating the affairs of the company between this date and the date of the closing of the transaction upon the basis of paying therefor a sum equal to $10,000.00 per share for all of the stock of the company; such purchase of the physical properties to be consummated upon demand of Magnolia Petroleum Company at any time after the expiration of the thirty-day period and in the contingency that you are unable to deliver all of the stock.

'It is understood that the Magnolia Petroleum Company will not be required to pay in cash on the purchase price a sum exceeding Two Million Dollars ($2,000,000), the balance, if Magnolia Petroleum Company desires it, to be covered by promissory notes drawing interest at the rate of six per cent. per annum from the date of the consummation of the transaction extending over a period of two years from this date, payable quarterly in equal installments, or at such other times and for such other periods as may be mutually agreed on between you and ourselves, all notes payable "on or before"

that at the time of such purchase of the stock of the Hogg Creek Oil Company by the Magnolia Petroleum Company, the Hogg Creek Oil Company owned an undivided one-half interest in lease (subject to the usual one-eighth leasor's royalty) covering approximately 4,400 acres in the Desdemona Field; (shown in red, plus two tracts enclosed with a red line and marked with a black "H" and a red "X" as shown on Joint Exhibit KK-1) that Magnolia Petroleum Company had the remaining undivided one-half interest in approximately 3,120 of said acres; that the Plains Oil & Gas Company, as to a part, and the Humble Oil & Refining Company, as to a part, owned a one-half interest in the leases covering the balance of such 4,400 acres, viz., approximately 1,280 acres, and that the books of the Hogg Creek Oil Company as of August 1, 1919, showed assets other than oil leases consisting of

| | |
|---|---|
| Cash | $ 32,000.48 |
| Producing wells and equipment | 281,027.87 |
| Incomplete wells and equipment | 210,354.14 |
| Tools and miscellaneous investment | 12,776.30 |
| Real estate | 750.00 |
| Accounts receivable | 1,016,062.85 |
| Total | $1,552,971.64 |

and liabilities in the amount of $1,069,276.30.

"Of the accounts receivable $879,798.05 was due from the Magnolia Petroleum Company (see Respondent's Exhibit TT—Sinclair Deposition, p. 177)."

Now, at page 2230 of the transcript of November 14, 1932, in these appeals occurs a part of the discussion we had at that time, and on that page the Presiding Member said:

"As far as I can see at the present time the only testimony that we could receive is as to sales subsequent to August 1, simply for the purpose of showing that there was activity in the field, and the extent of the activity, if you want to go into it."

Then on the next page the respondent offered testimony regarding this sale and a description of the property involved in the sale, the price paid, for the purposes of proving that such sale took place at a large amount of money, and that the bottom had not dropped out of the market on August 1, 1919, this being for the purpose of corroborating the testimony of the respondent's expert witness. Then occurs the discussions and suggestions that we stipulate this. The stipulation is offered in accordance with that suggestion.

Mr. Angell: Do you offer this stipulation?

Mr. Fullerton: Yes. The stipulation is offered.

Mr. Angell: This stipulation, your Honor, purports to be introduced for the sole purpose of proving that there was a market after the 1st of August, 1919, in this par-

ticular area. It covers the stock of the Hogg Creek Company which was acquired by the Magnolia Petroleum Corporation. The property of the Hogg Creek Company at that time consisted of a half interest, generally speaking, in the acreage shown in pink on KK-1. We object, first, on the score that inasmuch as the transaction involves stock it is not competent on the question of valuation of the Duke-Knoles leases. We object, second, on the score that this proof is limited to the proof of a market, but in order to prove a market it is necessary to prove that the properties involved were comparable with those presented in the particular appeal. We think the same principle applies whether the respondent is endeavoring to prove a market or whether he is endeavoring to prove a price. In either event, the comparable nature of the transaction must first be shown, and I submit in this instance it has not been shown.

The Presiding Member: The objection will be overruled. We will receive the stipulation.

Mr. Angell: Exception.

The Clerk: This will be stipulation No. 13.

* * * * * * *

The Presiding Member: I asked the Clerk last week if he would make a little check to see if we had all the exhibits in. It seems to me there are a great many that have been marked for identification, but which have not been offered. Perhaps you do not intend to offer them.

Mr. Fullerton: We do not intend to offer them.

The Presiding Member: You are sure of your ground, are you? I do not want to have any question come up later.

* * * * * * *

In accordance with this stipulation which has just been received in evidence bearing in mind the purpose of the stipulation petitioner moves to strike the following ex-

hibits: Exhibit JJ, which was a contract of October 20, 1919, contemplating purchase by the Magnolia of the Hogg Creek stock. It was offered in connection with the deposition of Mr. Dees.

The Presiding Member: * * * Would that not come in under the stipulation?

Mr. Angell: I think not. I think the stipulation undertakes to extract from a contract a certain particular part and that is the only material part bearing upon the existence of the market, as respondent has stipulated.

* * * * * * *

The Presiding Member: Then we will strike Exhibit JJ.

* * * * * * *

Mr. Angell: We also move to strike Exhibits OO, PP and QQ, which were the three documents of assignment executed in 1920, in carrying out the transfer of the Hogg Creek properties to the Magnolia upon dissolution of the Hogg Creek which seems to be wholly immaterial.

Mr. Fullerton: They are in the same category as Exhibit JJ.

The Presiding Member: We will strike them.

Mr. Angell: I move to strike the three maps, Exhibits CG, CH and CK. These maps were part of a large offer of maps colored in red and green, indicating the change over the different periods in the ownership of the properties. All of these three maps were subsequent to August 1. * * * Exhibit CK, the last of the three, covers particularly the Hogg Creek transaction we are now considering.

Mr. Fullerton: I think there will be no objection, but can I reserve that for a little while to check through?

The Presiding Member: Very well, if you cannot tell now.

* * * * * * *

The Presiding Member: Well, I will deny the motion.

Mr. Angell: On the understanding that the exhibits may be used only for the purpose of the determination of the existence of a market.

The Presiding Member: Well, I think that was the limitation when they came in, was it not?

Mr. Angell: No; when they came in—they came in, generally, your Honor. That was the purpose of the motion.

Mr. Fullerton: We have no objection to limiting them to show the facts after August 1, for the purpose of showing there was a market after that date.

The Presiding Member: Very well.

* * * * * * *

Mr. Angell: Respondent has offered stock market prices of Transcontinental stock down to and including the end of March, 1920. Petitioners now offer a chart which in chart form carries these stock market prices down through 1924. The chart also shows the volume of sales each week on the Stock Exchange, and by the broken line the prices received on the Stock Exchange during that period. If we are to go beyond the 1st of August, 1919, petitioners believe that the Board should have before it the whole general story of the descent in these stock prices.

Mr. Fullerton: The respondent would make formal objection to the matter which occurs more than a reasonable time after the dissolution of the syndicate, on the ground that it is irrelevant.

The Presiding Member: Do you not think this is a trifle too remote?

Mr. Angell: Well, it is a little bit far from the critical date, but I see no reason why we should stop at the 31st of March, 1920.

The Presiding Member: Perhaps not.

Mr. Angell: If we go on the remoteness can be discounted in the Board's consideration. * * * Of course,

this fully and completely concerns the petitioner's stock witnesses' statement that this stock was of very little, if any, value by virtue of the very rapid decline.

The Presiding Member: Your evidence goes to the point it had no fair market value at the time. You have not introduced any evidence as to what the actual market value would be.

Mr. Angell: That is right. It might also be taken as refutation of the Government's witnesses who put a rather sizable figure on the stock on the 1st day of August.

The Presiding Member: I think we will sustain the objection on the ground it is too remote.

Mr. Angell: Exception.

The Presiding Member: Note the exception.

The document referred to was thereupon marked Petitioner's Exhibit 107 for Identification (see Folder of Unprinted Exhibits).

Without objection there was received in evidence the map marked for Identification Respondent's Exhibit DL, which was the contour map used by Louis Ravicz.

Without objection there was received in evidence Exhibits DM, DN, DO and DP, which are the charts and graphs prepared by the witness Merriman.

Whereupon respondent rested subject to the concluding cross-examination of the witness Merriman, which was deferred pursuant to agreement approved by the Board at the close of the preceding session (the narrative of such testimony on cross-examination has been included with the direct examination appearing *ante*), and subject to possible minor offers which respondent might desire to make upon rechecking of the record.

REBUTTAL.

(Thereupon petitioners proceeded with the introduction of testimony in rebuttal.)

A. R. MCELREATH, a witness called in behalf of the petitioner, was duly sworn, and testified as follows:

I reside in Fort Worth, Texas. My occupation is that of oil operator. I have been so engaged for fifteen years and have carried on business in the selling and dealing in oil leases. I started dealing in March, 1918, in the Ranger-Desdemona Field acting for the partnership of McMullen & Gardner. From March 15, 1918, to August 1st, 1919, I handled fifty tracts of leases and royalties covering approximately 3500 to 4,000 acres. During that time I was in the Ranger-Desdemona Fields from the time Duke No. 1, Tex-Penn well came in in September, 1918, until the following January, two or three times a week. I first went into the Ranger Field in March, 1918, and consummated transactions in roughly ten to fifteen tracts. The first lease I bought in the Desdemona Field was in May, 1918, before the well came in. I bought three other leases, the last of these in April, 1918. Of these three properties the first one was approximately one and a quarter miles west of the town of Desdemona, the others about a mile and a half or two miles north of the town of Desdemona. I was in that field from September 1 to January 1, two or three times a week, after that it would average approximately one day out of each week up to the first of July. I was familiar with the leasing activities in the Desdemona Field up to the first of July. The leasing activity was pretty substantial. There was lots of trading in the entire field at that time. I left the field about July 1, was gone about ten days to two weeks. Upon my return, most of the leasing activity was centered around the cemetery or around

the town of Desdemona and southwest of the town. It was greater in that part of the field than when I left on the 1st of July. By that part of the field I refer to everything from the H. T. B. Survey north. Referring to the map—Respondent's Exhibit AS—the northern line of the survey is indicated here (indicating a line across the area owned by Tex-Penn Oil Company shown in green) running a little south of east and west.

On my return to the field about the middle or latter part of July, there was very little leasing activity in Comanche County and Erath County south of that east and west line of the H. T. & B. Survey. On or about August 1, there was not any leasing activity west of the Tex-Penn properties as of August 1, 1919. There was no leasing activity south of the Tex-Penn properties. By leasing activities I have reference to lease transactions involving sales. There was very little trading, if any, on August 1, 1919, east of the Tex-Penn properties. I do not know of any transaction between July 1 and August 1, which involved the transfer of leases on the west, south, or east of the Tex-Penn properties south of the H. & T. B. Survey. As a lease broker in this field, I was familiar in a general way with the drilling activities on the Tex-Penn leases and around the Tex-Penn leases during the three months preceding August 1, 1919. There might have been some lease transactions that I would not have known about, but if there had been a substantial number of lease transactions, it would have come to my attention. I say there were not any substantial transactions. I account for the absence of those transactions by the fact that there had been some dry holes drilled in that area south of the H. & T. B. Survey. There had been some small wells, some gas wells and the wells were declining from the time they came in—the producing wells. I refer to the Duke and Knoles wells when I speak of those wells which were declining.

*Cross-examination.*

I could not say definitely how many lease assignments or similar transactions occurred in June or July, 1919, within an area of five miles from the discovery well. I only kept up in a general way. There were a lot of transactions that I did not report at all. I do not know how many leases or how many acres covered by leases changed hands in that territory in June and July, 1919. There were, of course, so many transfers that only covered undivided interests in the town site and small tracts around the town that I could not give you a definite answer as to how many. I do not know.

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WILLIAM B. SUTTON, a witness called on behalf of petitioner, was duly sworn, and testified as follows:

I reside at Dallas, Texas. I am employed in the legal department of the Magnolia Petroleum Company. I am familiar with oil operations; first embarked in that enterprise in 1903 in Southern Kansas. I was interested in and was field manager for a company named Chautauqua Oil & Gas Company which owned three groups of producing properties. We opened up a small pool in Chautauqua County and were active as a producing company almost exclusively. As field manager, I supervised all the company's activities in the field drilling work, sale of oil and so on. We kept these properties until the spring of 1917 when they were sold to the Prairie Oil & Gas Company. The 1st of July, 1917, I took a position in the land department of the Prairie Oil & Gas Company at Tulsa, Oklahoma. A good deal of my time was spent in inspecting properties, some of the time working in the office with the ordinary routine of the land department work, receiving

files, checking reports, and the purchase of acreage and things of that sort. At that time the Tulsa office of the Prairie Oil & Gas Company had supervision of all the land department's activities which were principally in Oklahoma and Kansas. As long as I was in the Tulsa office I did not have much to do with the purchase of developed properties, but as we expanded or extended our operations into Texas I had some connection with that class of work. I first went into Texas early in December, 1917, to scout the country from the standpoint of whether the Prairie wanted to go into Texas or not—begin investing in Texas (prior to that time it had no investments in Texas). I did not get out of Texas until October, 1923. The first place that I went to look into was in Eastland County and the next morning after my arrival at the town of Eastland, I went to see the McCloskey well which was the discovery well of the Ranger Pool, the Ranger Field. After an inspection of that well and checking the country from the information available at that time I made a report and few days after that Mr. Dana H. Kelsey, superintendent of the land department, looked this well over and we began buying acreage, you might say, with both hands. The general area in which I bought acreage for the Prairie extended from about the northern line of Young County or the middle of Young County to the Colorado River which is south of Coleman County and we bought from Parker County on the east to Taylor County on the west. I never did compile the figures concerning the aggregate acreage purchased, but I would say that 200,000 acres was a very conservative estimate.

I bought acreage for the Prairie in the Ranger district. I couldn't estimate how many acres the Prairie acquired in the Ranger district because at that time what you might call the Ranger district would be everything you thought might later be brought into it by reason of this Ranger development. That was the whole starting point of the thing.

The Prairie bought some acreage in this play which later developed to be in the vicinity of the Desdemona discovery well, but that was bought as protective acreage in the country on the strength of the Ranger play. All purchases made around the town of Desdemona were made before the coming in of Duke No. 1 well, the discovery well. These were bought in in the period from January, 1918, to probably March, 1918. The Prairie did not make any purchases in the area which we have called the Desdemona area after March, 1918. I have forgotten what the capitalization of the Prairie Oil & Gas Company was, but it was one of the largest producers in the business and was the largest purchaser of crude oil that was in the country at that time. This map that I have before me (Respondent's Exhibit AT-17) itself correctly represents the acreage which we acquired in the area covered by this map. It is marked in yellow on this particular copy. The purpose of the Prairie Oil & Gas Company in making the purchases marked in yellow on this map was just as a protection play caused by the Ranger discovery. By protection play I mean just purchased the acreage in scattered blocks in an attempt to cover the country in such a way that no large pool could come in without our having something in it. The Prairie drilled wells on the J. T. McMillan lease just a little northeast of the northwest corner of Erath County —we had some production on it. Prairie drilled a well on the eighty-acre Hodge tract in the southeast part of the DeMoss Survey. That is in Comanche County and just slightly south of the county line. I think the Prairie did not conduct any other drilling operations on the other leases bought on this map.

I stated that I came down to the Ranger and Desdemona Fields shortly after the McCloskey well came in at Ranger. I remained in that general area until the 1st of October, 1923. I was in the field constantly. I was superintendent of the land department for the Prairie in Texas. That was

a branch of the Tulsa office with jurisdiction in Texas. The time I spent in the field varied anywhere from—at times, from one-half of my time to all of my time; and at other times I would not be out for perhaps some time. I first went into the Desdemona district the day the Tex-Penn well came in. Following the bringing in of the Duke No. 1, I made a few trips into the Desdemona district. During 1918 and 1919, I was observing generally the area and the development of the area in making reports to my company. We had a scout organization which covered the entire territory in which we had acreage. In 1919 up to the 1st of August, we had scouts operating in the area around Desdemona. I think we had six. Those scouts reported to me. On receiving their reports I made a report in duplicate to Tulsa and to the main office in Independence, Kansas. The report which the scouts made to me was a compilation of all the drilling activities in the field showing the locations made, the progress of the wells after location and the completion date; it was tabulated and sent on to Tulsa and Independence. Along with that, during the week some time we sent in what we called "hot dope," which was the new information—the important information that came up. Occasionally there were written reports from the scouts, and written reports from our office, discussing the fields, and this field in general.

I have no recollection of being in the field particularly in June or July, 1919. I was in it a few times, but not many. The reports of the scouts also included the lease trades and the trading activity. During 1919 and prior to the 1st of August, we had a monthly report on the production of each lease in the field and in addition to that the solicitations from the pipe line connections went through my office, except those which were made direct to the pipe line employees. Prairie Oil & Gas Company did the purchasing and they had to arrange with us and we arranged with the pipe line to make the connections.

The rate of decline in the Ranger Field was very great and as a result of this it made the field a rather disastrous one for all the operators in it. Based on reports that came to us, the rate of decline was greater in Desdemona Field than in the Ranger Field. Going back to August 1, 1919, in view of the development of the Desdemona district up to that date, the outstanding characteristic of the Desdemona wells was their rate of decline; they just went to pieces. The Desdemona district was considered very spotted. By spotted I mean that instead of the area, the productive area extending for a considerable distance unbroken, the entire field, or every well, was almost a wildcat, and you did not know in stepping from one location to another what you were going to get. There was no uniformity about it; and as it developed, the producing area turned out to be very small and apparently disconnected, making it naturally appear on your map, in spots and only spots.

Mr. Angell: * * * How much area around a dry hole would a dry hole condemn in the Desdemona Field?

The Witness: Well, I would not——

Mr. Fullerton: We object to that question, on the ground the witness has not been qualified as a geologist, and says he cannot remember the actual details here, so he should not be permitted to answer the question.

The Presiding Member: I will overrule the objection.

Mr. Fullerton: An exception, please.

The Presiding Member: An exception noted.

The Witness: I think you have asked me the wrong question. It is not a question of whether a dry hole condemns, because, in a sense, the country is all condemned until you find some production.

*By Mr. Angell.*

Q. That is what I am coming to. Let us take the dry holes first. A. Well, theoretically, and abstractly, a dry hole condemns only the territory it stands on, but its effect is more far-reaching than that.

Q. Taking the other alternative, a producing well, a profitable well? A. Well, ordinarily in a pool, a producing well tends to prove, in the beginning, a good deal of territory, but you must take that well in relation to the other wells around it, before you can estimate the effect of the one well.

You cannot say, in Desdemona, or anywhere else, that one well proves a definite amount of territory, if you consider only that one well. But the situation in Desdemona, with its spotted character, was much the same as to a dry hole as it was with a producing well: Either one proved the territory, or tested the territory in which it stood.

Q. And only that territory, or other territory? A. That is all you could be sure of.

Q. Well, now, the first Duke well, Duke No. 1 as shown on the map that you have there before you and numbered No. 1, prior to August 1—there was drilled in the immediate vicinity of that No. 1, Knoles No. 1, which is shown on the map as No. 2; and Magnolia-Duke No. 1, which is shown on the map as No. 3; all in a comparatively compact group. Would the coming in of those three wells, whose initials range from 5,800 barrels down to about 400, in your opinion, prove the Tex-Penn acreage as a whole? A. No, sir; you could not tell, at that stage of the development, what was a good area and what was not a good area; but, you see, generally, there in a situation of that kind, where all of the wells are offset, that suspected good area would extend in all directions equally distant, unless there is something very marked shown up in the drilling of those wells.

In other words, they are so close together that they do not prove definitely that scope of the territory; they tend to prove that there is a field there, but its extent and direction they do not prove.

The drilling of other wells—subsequent to these three that we are discussing—around the periphery of the Tex-Penn properties showing small production, ten, fifteen, or twenty barrels, or dry holes, certainly had significance with respect to the probable oil in the Duke-Knoles leases—every well that was drilled within a reasonable distance, in that part of the territory, had a tendency to establish its value or lack of value. By that I mean that, if, taking the Knoles wells as the center here, a well was drilled first to the west that was unprofitable, that would give you to understand that somewhere between the producing wells and that dry hole was the limit of production. If then another well was drilled to the west of these three producers, on the Tex-Penn acreage, which was unprofitable, you would say that all of the territory between the dry hole on the Tex-Penn acreage and the dry hole off the edge of it was condemned from an economic standpoint, and the same would be true in any other direction in which you might develop from it.

I note on the map before me on the Payne tract, to the east from the Magnolia-Duke tract we are discussing, the symbol No. 5. I am asked to assume that that was the Payne No. 1 well of the Tex-Penn Oil Company which was completed February 2, 1919, with 30,000,000 cubic feet of gas. I am asked what significance the coming in of that well had with respect to the Tex-Penn property at the time it came in, and I would say, depending somewhat on the value of gas in the area, that might be taken as some evidence in the bringing in of valuable production. Whether it actually did show value would depend on the cost of the well after its discovery, because at that time gas, and its significance, were unknown quantities in the Desdemona

Field. If a gas well of that size showed or indicated the top of a defined structure, it might later become a valuable oil well. Under the conditions existing at the time the well in question came in, I would not think it added any value and as it developed later the performance of a gas well detracted from the value of the property.

Q. Well, now, as of the 1st of August, 1919, would you, in view of your knowledge at that time under the conditions existing in Desdemona district, have recommended to the Prairie Oil Company the purchase of these Duke-Knoles leases? A. I would not.

Q. Why would not you have done so? A. Because there was nothing about them attractive enough to induce us to make the investment.

Q. When you say "nothing attractive enough," what do you mean? A. I mean that the lapse of time from the discovery in September, 1918, until August 1, 1919, had satisfied me that there was no material value in those leases, from a producing standpoint.

The respondent moved to strike the answer on the ground of immateriality and irrelevancy. Motion denied and exception noted.

Over respondent's objection, exception being noted, the witness testified:

The factors that led me to that conclusion are first: that the course of the development there had demonstrated the spotted character of the field, which destroyed all hope that a large pool might be discovered on the property in connection with the original wells; second, that the course of the development on the tract taken in connection with the course of the development, or the result of the development, in the south, southwest, and east and north had practically eliminated any possibility of either this pool extending to any great extent, or that any considerable pools might be found on the property. That, taken in connection with the performance of the wells and the fact that

the discovery area on the Tex-Penn acreage was producing, or apparently producing from the lime, itself, whereas the discovery of the pools above indicated production from the sand lens in the lime, and in case of lime production did not promise even as long lived or as good production as the sand lenses—I came to the conclusion that the property, as oil producing property, would not be attractive to our people.

*Cross-examination.*

In 1919 I had at least six scouts. Of these, one worked in the area near or surrounding the Town of Desdemona most of his time and another one was in there sometimes, but there was one regular man. In my direct testimony I compared the rate of decline in the Desdemona and in the Ranger. I have no chart or specific figures on the relative production of oil in barrels per acre or barrels per well in the Desdemona area and the Ranger area.

Q. You don't know, and you could not compare the two, then, could you? A. You mean exactly, no.

Q. Could you compare the production from the wells on the Tex-Penn-Duke-Knoles leases with the production in other parts of the area, within five miles of the discovery well on the Duke-Knoles leases? A. You mean compare the rate of decline on the Duke-Knoles group there, those three, with the ones in the area to the north and northeast?

Q. No, compare the production, compare the actual production to date. A. To date?

Q. To August 1, 1919. A. As of August 1, 1919?

Q. Yes. A. No, not in barrels, only by general knowledge of what happened to the initial prouction on the wells, from time to time, based on current reports.

Q. Then your conclusion is based on general knowledge and not on actual knowledge of conditions in this Desde-

mona Pool? A. If you mean the actual conditions, and by that you mean the total barrels of production up to a certain time, I do not have that data to-day.

Q. You did not consider the actual production up to August 1, 1919, in drawing these conclusions that you have mentioned? A. No, sir; I spoke of the rate of decline, which may or may not be affected by the total barrels.

Q. Where did you get your figures on the rate of decline? A. I did not have any figures; I just compared the two. I just took that from the reports, from being in the Ranger Field. Of course, that field had been in longer than the Desdemona district, long enough for it to have demonstrated its course and direction pretty thoroughly. Naturally, when Desdemona came in, we were interested to know—everybody in there was—whether it was going out to be the same sort of field, regarding the permanency of the wells, that Ranger had been, and we found it was, only more so.

Q. If the actual figures should show that the actual production up to August 1, on the Duke-Knoles-Tex-Penn leases, compared very favorably with the actual production at Ranger, would that modify your opinion? A. What do you mean, "compare very favorably"?

Q. Well, suppose the figures show that the actual production, per well, at Desdemona, on the Duke-Knoles leases, exceeded the actual production, per well, of the wells in the Ranger Field— A. You are limiting your inquiry in the Desdemona to three wells, and taking the whole Desdemona Field. Now, I don't believe you can do that and get a result that is worth anything.

Q. That would not change your opinion, either? A. Well, I haven't anything to compare by, that is what I am saying. My opinion is that, generally speaking, taking the wells in the Desdemona district, their rate of decline was more rapid than the general wells in the Ranger area.

Now, I have no doubt that I could pick out—if I had the figures before me, I could pick out specific wells that would prove either to support that or dispute it; but generally speaking, my opinion is that the rate of decline in the Desdemona Field generally was higher and more rapid than the rate of decline in Ranger.

Q. Now, in regard to the rate of decline, upon what wells in Ranger Field do you base your comparison? A. No particular wells. That is the general history of the field.

Q. That is just the general impression that you have from your memory of the past? A. Yes, sir; from living in it, having it happen all around me. I formed an impression at the time, which gives me a yardstick by which to measure the same sort of actions when they came up in the Desdemona district.

I have never studied geology. My geological knowledge is all obtained by absorption.

Q. Now, if, as a matter of fact, the total production, per well, from the wells on the Duke-Knoles-Tex-Penn leases in Desdemona was greater than the actual production of the wells, per well, in Ranger, would you still be interested in the decline as the prime factor in forming your opinion? A. Yes, I would be interested in the decline, because it is the rate of decline that has a bearing upon the rate of recovery, and the rapidity with which you get oil out, consequently your expense in producing it. But the total recovery is not always the measure of the decline. Further, if you have production taken at the proper intervals, you may have a decline——

Q. Then you think that the actual rate at which the oil comes out of the ground is more important than the actual amount of oil obtained? A. The ultimate, actual amount obtained is what you get your money from, but the rate of decline is the most important factor in making up your mind, in studying and appraising property, as to what the total production will be.

Q. Is it true that the fact that a well in a certain field produces a certain amount—is it not true that that is an indication of what the other wells in that area might be expected to produce? A. In some cases, yes; but you will find in any field that they have wells above the average, freak wells above the average, and small wells below the average. I don't think any one well makes a field, any more than one swallow makes a summer. You have got to have—that is, if one well is gotten by one man, what that one man gets does not determine the value of the field. If only one man can get a big well, then you judge the field for the rest of the world by the rest of the field.

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HOWARD P. INGELS, a witness in behalf of the petitioners in rebuttal, was duly sworn and testified as follows:

*Direct examination.*

I live in Greenwich, Connecticut. I am a partner in Munds, Winslow & Potter, brokers, of New York City. I am also vice-president of Theodore Schultz & Company, a private banking corporation. The corporation does underwriting and usually takes the more constructive side of banking than the ordinary brokerage business, in that it takes positions in companies and sticks with them and helps to build up the companies and develop the business. It also takes participation in syndicates and has acted as syndicate manager in the flotation of stocks.

In the year 1905 I graduated from the University of Kentucky with the degree of mechanical engineer. After my graduation I went with the American Car & Foundry Company in the engineering department at Berwick, Pennsylvania. After two years I was made chief engineer of their Milton, Pennsylvania, plant and was there about a

year. I next went to New York as the eastern manager of the Youngstown Car & Manufacturing Company of Youngstown, Ohio. I had charge of the eastern sales and export business for about two years. I then went with the White Automobile Company of Cleveland, first in the sales and then as assistant to Mr. Walter White, president of the company. Later I moved to Youngstown, Ohio, and was assistant general manager of William Todd Company, which company builds steel mills. Following that I was vice-president of the Realty Guaranty & Trust Company of Youngstown, the activities of which were underwriting most of the issues of various steel companies in the Mahoning Valley there.

In 1915 I still had a residence in Youngstown and spent practically all of my time in New York and negotiated a contract with J. P. Morgan for the British Government, and we developed a plant in Milton, Pennsylvania, manufacturing shells. I was vice-president and consulting engineer of that plant, which was called Milton Manufacturing Company. A few days after war was declared, on April 6, 1917, I came to Washington and remained here until January, 1919. First I was assistant secretary of the Old General Munitions Board and then secretary of the War Industries Board throughout the balance of the war. I also served as vice-president of the Price Fixing Committee.

At the conclusion of the war I went to New York with my present partner, Mr. Theodore Schultz, and we went with Col. William Boyce Thompson. Col. Thompson was identified with a great many of the larger activities of the country, being largely interested in copper; he was in the general banking business, director of the Chase Bank and a director of the Federal Reserve Bank in New York. He was a man of very broad activities. My association with Col. Thompson was in the nature of a joint venture. One of our ventures was the underwriting by our group of a

million shares of Sinclair Oil Company, and my partner, Ted Schultz, was on the finance committee of that company. We also started a company called Oil Issues Company, which secured the services of one of the outstanding geologists and also an outstanding production man, the prearrangement being to explore and work out structures and take up leases, and in due time they had leases in Kentucky, Louisiana, Texas, Oklahoma and Kansas. The company developed to be a production company. During this time I had occasion to study oil properties. In due time the company had a good many millions of dollars invested in what might be termed a small production company. In 1922 the operation of that company was turned completely over to me to do as I liked with it. After the company became a producer the name was changed to the Hamilton Oil Company. Mr. Thompson and associates, including myself, formed this company. It was an operating company with properties located in Kentucky, Texas, Oklahoma and Kansas, the assets being probably worth $5,000,000. The Hamilton Oil Company was merged into the Mutual Company and that in turn was merged into the Continental, and is now a part of the Continental Oil Company. Mr. Kuhn, who was vice-president of the Mutual Oil Company, and I worked out the terms of the merger and determined the amount of stock which should be issued for the properties of the two merged companies. In order to determine the terms of the merger, we made a very thorough examination of the properties of both companies. We also made an investigation of practically all the independent oil companies that we knew of before we opened negotiations with the Mutual. I also participated in a modest way in the merger of Mutual Oil Company with the Continental Oil Company.

It was about ten years ago that Mr. Schultz and I, together with Col. William B. Thompson, organized Theodore Schultz & Company, and I immediately became iden-

tified with it. In the course of its business, in taking participation in syndicates and acting as manager for syndicates, we participated in quite a number of operations in the oil industry. In other words, we join a group, take positions in various companies, and I personally kept in fairly close contact with men who are responsible for running a good many companies. I tried to follow the oil industry very closely. Theodore Schultz & Company has taken participations in syndicates organized for the purpose of floating oil stocks, including the stocks of the Beacon Oil Company, the Ohio Company, and in various operations in Sinclair Company. Generally speaking, the aggregate of stocks involved in syndicates in which Theodore Schultz & Company has participated is approximately $100,000,000. The company has also acted as syndicate manager in floating oil stocks in a few instances.

I have also had personal experience in connection with the examination of oil properties in Texas, Oklahoma and Kentucky, including both developed and undeveloped properties. Some of them were flush production, some old properties with settled production, and others wildcat leases. I think I have visited most of the Texas oil fields. About ten or twelve years ago I visited the Ranger Field in Texas. I spent most of the years 1920 to 1922 in various oil fields in Texas. I was studying various properties to make investments for the Hamilton Oil Company.

I glanced through the testimony of the witness Merriman and heard part of his cross-examination. I have also read a copy of the hypothetical question which was put to petitioners' witnesses in this case and have casually examined the schedules and exhibits attached thereto.

Mr. Angell: I am about to put to the witness, your Honor, a hypothetical question. I do not want to be taken to admit the facts which appear in the hypothetical question, but I am putting it to the witness for the purpose of rebuttal testimony.

Thereupon the witness was asked the following hypothetical question, which was the same as that propounded by the respondent to the witness Merriman:

*By Mr. Angell.*

Q. For the purpose of your testimony, you may assume the following facts:

The Transcontinental Oil Company was organized under the laws of Delaware on June 28, 1919, with a capital stock of 2,000,000 shares of common stock of no par value. It was authorized by its charter to produce, refine, sell and distribute petroleum and its products, and to purchase, lease and exploit lands, or the oil, gas or mineral rights in lands, for the purpose of producing oil and gas therefrom. It disposed of 750,000 shares of its stock to Prichitt & Company, bankers of New York, and E. W. Clark & Company, bankers of Philadelphia, for the aggregate of $20,225,000—500,000 shares at $40 per share, 25,000 shares as commission, and 225,000 at $1 per share, an option which was later exercised.

The Transcontinental Oil Company was bound to use the entire proceeds of $20,000,000, the same being the proceeds of sale of 500,000 shares of its stock to the bankers at $40 a share, as working capital and in the acquisition of properties.

The Transcontinental Oil Company, for the portion of cash so received and the balance of its stock, acquired:

(a) All of the assets of the Tex-Penn Oil Company, which included a one-fourth working interest in the so-called Duke-Knoles leases, covering approximately 3,100 to 3,400 acres, lying mainly in Comanche County, Texas.

(b) A five-eighths overriding royalty in the same leases which, together with the interest owned by the Tex-Penn Oil Company, comprised the entire seven-eighths working interest in the leases.

(c) All of the remaining assets of the Tex-Penn Oil Company.

(d) All of the assets and liabilities of the Pittsburgh-Texas Oil & Gas Company.

(e) All of the assets of the Riverside Western Oil Company and its subsidiary; and

(f) All of the assets of the Riverside Eastern Oil Company and its subsidiaries.

The consideration paid for these assets is shown as follows:

To the Tex-Penn Oil Company, the Transcontinental Oil Company paid 1,007,834 shares of its stock; to the owners of the five-eighths overriding royalty in the Duke-Knoles leases, the Transcontinental Oil Company paid $9,000,000 in cash; to the Pittsburgh-Texas Oil & Gas Company, the Transcontinental Oil Company paid 158,833 of its shares of stock; to the Riverside Western Oil Company, the Transcontinental Oil Company paid $1,250,000 in cash and 41,667 shares of its stock; to the Riverside Eastern Oil Company, the Transcontinental Oil Company paid $1,250,000 in cash and 41,666 shares of its stock.

Or in the aggregate, for the properties which I have listed, the Transcontinental Oil Company paid out $11,500,000 in cash and 1,250,000 shares of its stock.

Messrs. Benedum and Parriott, whom you may assume received, by direction of the Tex-Penn Oil Company, this 1,007,834 shares, which the Tex-Penn Oil Company received in the transfer of its stock—Messrs. Benedum and Parriott agreed with the bankers that, under no circumstances, would the shares of the Transcontinental Oil Company stock coming to them be sold or parted with in any way by them during the life of the underwriting syndicate.

The syndicate, by its terms, was to have expired on October 18, 1919, but the syndicate managers were given

the right to extend it for a period of ninety days in addition, or until January 16, 1920, which extension of it was exercised; and, as a matter of fact, the syndicate did not terminate until January 8, 1920.

That the balance sheet of the Transcontinental Oil Company as of August 1, as shown on Petitioner's Exhibit 59 and headed (b) August 1, 1919, may be taken as accurate; and I hand you a copy of this balance sheet and direct your attention to the column under the caption "B" August 1, 1919.

Now, with that balance sheet before you, let me continue:

For the purpose of your testimony, you may disregard the amount shown as the asset item, "Property acquired at organization," and the liability account of "Capital Surplus" in the balance sheet, headed "B," August 1, 1919.

You may also assume that the item "Bankers' subscription to stock, $9,377,115," is entirely made up of an unpaid portion of the proceeds of the sale of the Transcontinental Oil Company stock to the bankers, E. W. Clark and Prichitt & Company, and that this item was an account receivable worth one hundred cents on the dollar.

The current asset and liability accounts are self-explanatory, and you may accept them as correct.

Now, turning to the "Properties acquired at organization," these properties are as follows, and in respect to such properties, you may assume the following:

(1) In respect to the Duke-Knoles leases, which, as I said, comprised some 3,100 to 3,400 acres, lying largely in Comanche County, Texas, you may assume that the fair market value of such leases on August 1, 1919, amounted to $12,000,000.

(2) You may assume that certain wholly undeveloped oil properties in Texas, Louisiana and South America had an aggregate value of $221,500 on August 1, 1919.

(3) You may assume that from the Riverside Eastern Oil Company and its three subsidiaries, the Transcontinental Oil Company acquired ten casing-head gasoline plants, two blending stations, two compounding plants, thirteen distributing stations, rolling stock, equipment, etc., all in West Virginia and Ohio, three small producing oil and gas leases in Ohio and West Virginia, and various casing-head and gas purchase contracts. The company obtained the gas needed in its gasoline manufacturing operations from these gas purchase contracts. The assets acquired constituted all of the assets of the Riverside Eastern Oil Company and its three subsidiaries.

I show you Petitioner's Exhibit No. 40, listing the physical assets acquired, with a brief description of their locations, character and the cost of acquisition, less depreciation.

I show you also a copy of Petitioner's Exhibit No. 42, showing the book profits or losses realized by the Riverside Eastern Oil Company and its three subsidiaries for the years 1916, 1917, 1918 and seven months of 1919, before depreciation and after depreciation, the depreciation being computed at rates used by the Treasury Department in auditing the company's current returns, such statements showing average yearly net earnings of the period of operation of $27,876.

(4) You may assume that from the Riverside Western Oil Company and its subsidiaries, the Transcontinental Oil Company acquired seven casing-head gasoline plants and two blending stations located in Oklahoma, and one compounding plant and six distributing stations located principally in Nebraska, Iowa and South Dakota, and various casing-head gas purchase contracts. The Riverside Western Oil Company obtained the gas needed in its gasoline manufacturing operations under these contracts.

I show you a copy of Petitioner's Exhibit 44, listing the physical assets acquired from the Riverside Western Oil

Company, with a brief description of their location, character and cost of acquisition, less depreciation.

I also show you a copy of Petitioner's Exhibit 45, showing the book profits of the Riverside Western Oil Company and its subsidiary during the years 1913, 1914, 1915, 1916, 1917, 1918 and seven months of 1919 before depreciation and after depreciation, the depreciation being computed at rates used by the Treasury Department in auditing the company's current returns. You will note that the average net profits over the period in question, after deducting depreciation, was $45,200.

(5) You may assume that the Transcontinental Oil Company acquired from the Pittsburgh-Texas Oil & Gas Company the so-called Boynton Refinery and related facilities located in Boynton, Oklahoma, which you may assume had a value of $500,000.

And in addition to the Boynton Refinery, the Transcontinental Oil Company acquired from the Pittsburgh-Texas Oil & Gas Company certain assets and current liabilities, on or about August 1, 1919, which you may assume are reflected in the balance sheet headed "B" August 1, 1919, which is Petitioner's Exhibit 59, a copy of which you have before you.

In addition to the above-listed assets, you may assume that the Transcontinental Oil Company acquired, on or before August 1, 1919, from the Pittsburgh-Texas Oil & Gas Company, certain undeveloped oil leases in Texas, and certain developed leases in Oklahoma, which, for the purpose of your testimony, you may assume had an aggregate value of $238,500 on August 1, 1919.

Finally, you may assume that during the three months from May 1, 1919, to July 31, 1919, the operations of the Pittsburgh-Texas Oil & Gas Company resulted in a net loss of $65,575.42 after proper deduction for depreciation.

For the purpose of the question I am about to put to you, I ask you, further, to assume that we are now en-

deavoring to ascertain, if possible, the fair market value, for the purpose of income taxation, on August 1, 1919, of the 1,007,834 shares of Transcontinental Oil Company stock issued to Messrs. Benedum and Patriott under the circumstances I have recited; and by fair market value, I mean the price at which a seller, willing but not compelled to sell, and a buyer, willing but not compelled to buy, both of whom are informed regarding the property, will deal.

This fair market value must be presently realizable in cash or its equivalent, and it must be ascertainable with fair certainty, and it must be realizable within a reasonable time, considering the character of the property which is to be valued.

Now, with these facts before you, and this definition in mind, I now ask you whether, in your opinion, these 1,007,834 shares of Transcontinental Oil stock did or did not have, on the 1st day of August, 1919, a fair market value then presently realizable in cash or its equivalent, and ascertainable with fair certainty.

Mr. Foley: Just a moment. I object, if the Board please, on the ground that this is not proper rebuttal. This is the same ground which should have been covered, and was covered, as I recollect it, by the petitioners in their testimony in chief. So far as I can recall, the respondent did not, as regards the stock, bring out any new evidence, such as would call for rebuttal testimony, but he accepted the petitioners' presentation of the case, except that the question was drawn largely, if not entirely, from the evidence which had been introduced by the petitioners.

No new matter having gone in through the respondent's case, I submit that there is no call for rebuttal testimony, and that, particularly, there is

no call for rebuttal testimony in connection with this question of stock valuation.

The Presiding Member: What have you to say to the objection, Mr. Angell, that this is simply cumulative evidence?

Mr. Angell: This hypothetical question that I have put to the witness is the respondent's hypothetical question, and not the petitioners' hypothetical question. I have varied from the petitioners' hypothetical question to a very material extent, and the question permits the witness to assume that these Tex-Penn properties, as the Government has asked its witnesses to assume, were worth $12,000,000 in cash on August 1, 1919.

I think we are entitled to get the hypothesis by putting the witness on the stand by way of rebuttal, and get an expression of opinion, which either conforms or does not conform to the conclusions which the Government expert witnesses reached.

Mr. Foley: That matter also was covered by the petitioners in their case in chief, as I recall. The testimony was, I think, that the Tex-Penn leases had no value whatsoever. So the question whether they had a value, and whether that value was $12,000,000, was naturally gone into in the case in chief.

Our $12,000,000 valuation depends upon the testimony of our experts to the effect that the leases did have a value of $12,000,000.

Mr. Davis: Of course, that testimony was not in evidence when we examined our witnesses in chief.

Mr. Foley: No; but it was a part of the case in chief, to show what the value, if any, of the Tex-Penn leases was.

Mr. Angell: I might say, your Honor, that this is the precise form of procedure we adopted in the Ford case with respect to rebuttal testimony, as I recall.

The Presiding Member: Well, I will overrule the objection.

Mr. Foley: An exception.

The Presiding Member: Note the exception.

*By Mr. Angell.*

Q. Let me, to be clear, Mr. Ingles, put this last question of mine to you again: With these facts and this definition which I have given you in mind, I want to ask you whether, in your opinion, these shares of stock, namely, 1,007,834 shares, did or did not have on August 1, 1919, a fair market value then presently realizable in cash or its equivalent, and ascertainable with fair certainty? A. There is not a question in my mind—I don't think it did, that was ascertainable with any fair degree of certainty. In the first place, the stock——

Q. Just a moment. You say, in your opinion, did it or did it not have a fair market value on August 1, 1919? A. That was ascertainable with a degree——

Q. Under the definition that I have given you, yes? A. No, I don't think it did.

Q. What are the reasons in support of your opinion? A. The first reason in support of my opinion is that, considering the number of shares that were free shares in the market, that is, a block of over a million shares which was tied up for a considerable length of time, and the fact that the syndicate had an option for a ninety-day extension, there is not, to my mind, a possibility of getting a purchaser for it. It is certain no individual purchaser would purchase without making a careful survey of the properties, which, from my own personal experience in

having oil properties investigated, would take at least ninety days, with the engineers on the job.

In the second place, no investment house would take over that proposition, with all of the investment bankers in the picture, that were handling the market. So that I don't think there is a possible chance in the world of selling that stock or realizing upon it at any price; I would not like to undertake it. I don't believe that the bankers in the case would have permitted Mr. Benedum or Mr. Parriott to have sold the stock, for the simple reason that these two exhibits show that here were some properties that were pooled together, some in West Virginia, some in Texas, some in Oklahoma, and the full success of the enterprise is contingent on two things: It is contingent on the values of the properties themselves, which nobody knows and there is no way of knowing it, especially on wildcat properties. It may be a liability instead of an asset. I know every company that I have had anything to do with—we have had to cut loose; and if you will analyze the statements of any oil companies, you will see they have frequently released leases because they are liabilities.

In the second place, the whole thing was built up around these gentlemen, on the question of management, which is an important factor in any enterprise. I just can't say there is a possibility of them being able to sell this stock at any price.

If Messrs. Benedum and Parriott had sold the stock, the management would have gone with the stock; the management would have gone out of the company.

*By the Presiding Member.*

Q. But that would have been equally true if there had been no restrictive agreement? A. What is that?

Q. I say, suppose there had not been a restrictive agreement, would that stock have more value because, if they sold it, they would sell the whole management? A. No; it would have a value, if they could sell it.

Q. But what is the point about Benedum being the manager of the enterprise? If he sold the stock, then he would not be any longer the manager. A. I don't think—I didn't mean—you took that a little too seriously, your Honor, as far as I was concerned, with respect to Mr. Benedum. I refer to Mr. Benedum not as a man, but as a person—as I understand it, it has been brought out here that he was responsible, more or less, for the management of the enterprise; is that correct?

Q. I don't have to answer that question. A. That is what I was assuming, but I may be wrong. I say, here were these gentlemen, turning over a million shares of this stock, with a more or less limited market, with no opportunity to cash in on it, so to speak. You may own anything in the world, but if you are tied up so you can't realize on it, it isn't worth anything to you.

*By Mr. Angell.*

Q. Now, Mr. Ingels, let me inquire about it along those lines: * * * Aside from the restrictive agreement on the sale of the stock, would or would not the management have passed with the stock? A. Under the circumstances—I would assume that it would. I don't know. Of course, it may not, because a great many companies are managed by people who own a very small stock interest in them.

Q. Well, assuming that it did pass with the stock—A. But in a new enterprise, my opinion or judgment would be that the people that owned the remaining 50 per cent. of the stock of the new company, without any earning record as a combined unit, if they got out—if that stock was sold, they would be out also. That is just my assumption.

Q. Assuming that the management does go out with the stock; is that management an element in value in determining the fair market value of the stock? A. No, not by those individuals. Of course, it would depend on who would take their place.

One of my reasons for saying the fair market value would not be ascertainable with a reasonable degree of accuracy as of August 1, 1919, is that in looking over those records I would say, taking the main properties involved, with the rate of decline on those wells, and with the number of dry wells there were around, which indicated to me it was either a lensy formation or it was certainly a very spotted formation, and the whole acreage of the property itself—I think anyone who knows anything about oil properties would be very doubtful whether he could even get his drilling costs back out of it. I don't believe you could sell a man 10,000 shares of stock in it if he knew anything about the oil business. If he had sent his own man out to investigate it, I don't think he would buy it.

On the assumption that these Duke-Knoles leases were worth $12,000,000 on August 1, 1919, you would have to ask yourself: How is that figure arrived at?

Looking over the production of those wells, the best well in the field was the Knoles No. 1. Based on that, it looks like the value was there, but, nevertheless, the development, even up to the 1st of August, showed that was not the case.

Q. Do you think, Mr. Ingels, there is any likelihood that the bankers would have been willing to waive the restriction, in view of the fact that the sale of the stock carried with it the management? A. No, I would not.

Q. For the purpose of clarity of the record, I want to get your response to the hypothetical question clear. You understand from the hypothetical question that I put to you that you are to assume that the Duke-Knoles leases had a fair market value, on the 1st of August, 1919, of $12,000,000? A. I do.

Q. And taking that hypothesis, as I understand your statement, you have expressed the opinion that the stock in question did not have a fair market value within the definition that I have given you? A. I certainly do.

Q. In reaching that conclusion, what weight do you place upon the restrictive agreement which I have given you as a part of the hypothesis? A. I placed quite a good deal of weight on it. On the other hand, I maintain that, if any interest in an enterprise of this kind had owned over a million shares of that stock, whether that stock was restricted or not restricted, you could not ascertain the fair market value of it, because it could not be sold. As far as I am concerned, and as far as any other man with whom I have been associated is concerned, who has had any experience in the oil industry, which is a hazardous business, I can't conceive of any man stepping out and buying a million shares of stock that he could not resell for a period of seven or nine months—I just don't believe you could get a bid on it.

Without the restriction on it, I don't think it could be sold, because even taking it over at a nominal figure, even $1 a share—I don't believe that a man would put $1,000,000 into any new enterprise of this type without having his own engineers or attorneys make a very thorough examination or inspection of it, and I think that if a thorough examination was made of it, the fellow would shy away from it, he would not go into it. No person, outside of the Great Creator, could put any reasonable valuation on those properties; I think it is physically impossible; that is, as far as the properties are concerned.

Q. I have given you the fair market value of the properties and have asked you to assume that those figures which I have given you represent the fair market value for the purpose of this question, and I put the question to you with respect to these 1,007,834 shares of stock; and as I understand your response to the question, it was that, in

your opinion, it had no fair market value, because it cannot be determined with reasonable certainty. A. That is right.

Q. Now, I am trying to draw from you, personally, the reasons that you assign in justification of your opinion. A. Well, to my mind, the restriction has a great deal more bearing on the market value of that stock than has been brought out here. I think it is very, very important, because I don't believe that you could get any man—or you certainly could not get any group of bankers to go in and take an obligation that was tied up for the length of time that was tied up.

Q. Why not? A. Because bankers are just exactly like a small country storekeeper who is in the drygoods business: he can't have his shelves full of drygoods and make any money: he has to be turning his things over.

It would take unlimited capital for the bankers to go in an enterprise where they could not make a turn-over—and certainly, if this was tied up, there would be no possibility of untying it; they just wouldn't go into it; it wouldn't have any value to them, as far as they are concerned. I have never heard of a syndicate being organized for the purpose of selling stock of an oil company, when the stock is sold subject to a restriction of this character. Of course, they sell voting trust certificates, or shares in a voting trust, but in my experience I have never heard of a syndicate selling stock subject to a restriction that you could not sell. Assuming that under the restriction the owner could execute the contract for the sale of the stock, with delivery to be made some seven months later, that would not affect my conclusion as to the absence of any definite fair market value for the shares of stock, because I don't think you could make any such deal.

*By the Presiding Member.*

Q. Well, now, you don't assume what counsel asks you to.

The Presiding Member: He did not do that at that time, did he?

Mr. Angell: I thought he did, your Honor. However, let me ask one question with respect to the restrictive agreement.

*By Mr. Angell.*

Q. Let us assume that the owners of the stock, Messrs. Benedum and Parriott, could have made, on August 1, 1919, a contract to sell the stock, but delivery under such contract could not be fulfilled until seven months later. Under those circumstances and on that assumption, are you, or not, of the opinion that the shares of stock in question had a fair market value on August 1, 1919? A. I am of the opinion that it did not. I understand, your Honor.

Q. Why do you think that the stock of the Transcontinental Oil Company did not have a fair market value on that assumption? A. Well, as I understand fair market value, there has to be both a buyer and a seller, and I don't believe that there is any such thing existing as a buyer under those circumstances or conditions.

*By Member Van Fossan.*

Q. You think that, although the question put to you assumes that this company had assets in excess of $20,000,000, one-half of which, or nearly one-half of which, was in cash readily realizable, that nobody would take a chance on it, then, for any price? A. Eight or nine months later?

Q. Seven months is the figure that has been used. You would not take a chance, at any price, however small, with that assured figure in the future? A. I don't believe so, because that money was paid in for the purpose of serving as working capital; in other words, the money was ear-

marked. The money going into this company was all earmarked for working capital in a very hazardous undertaking, which oil production is; and I don't believe you could get anybody to go and commit himself for seven or eight months from now on a new company like this. If it was an old seasoned company, that had an earning record, and a seasoned management, and was a going concern, a smoothly running concern, yes, I would agree with you; but under the circumstances, dealing with this particular company that we are dealing with, I don't believe you could find such a person.

Q. If this company had assets worth in excess of $20,000,000, is there any way in which it could have been liquidated? A. Right as of that date?

Q. As of seven months later. A. Seven months later?

Q. Yes; would that have had any value in such a situation as that? That is not perhaps a fair test in this case, but I am just testing out your ideas. A. Seven months later? It might have been liquidated seven months later, yes. Anything that has assets and is free may or may not be able to liquidate, depending on whether you could get a buyer for it.

*By Mr. Angell.*

Q. Is there any certainty that, seven months later, any assets existing August 1, 1919, would still be in the company? A. Absolutely none. No one would take a commitment a year from now in a good concern that has fine assets right at this minute, and cash in the bank, if they are in a situation where they are losing money and can't stop. I don't mean that no one would have paid, say, $25 for these 1,000,000 shares on August 1.

Q. Let us clear that up. Do you mean that no one would pay a substantial sum, in your opinion, on the 1st of August, 1919, for the stock? A. It depends on what you

mean by "substantial sum." There are lots of fellows that will bet on a horse race, or bet on anything; but a substantial sum, I wouldn't.

Q. Is there any possible way of determining what would be considered a substantial sum or a fair sum for that stock on that date? A. I don't think there is. There are too many factors and too many uncertainties in it. Certainly, I couldn't figure it out.

*Examination by the Presiding Member.*

Some of the stock did find a market. I am familiar in a casual way with the fact that quite a large block of it was sold on the Exchange at a very high average figure. We were not interested in the Transcontinental, but I knew there were a number of transactions and transfers. Of course, I knew there was a good deal of talk going on around at the time, because that was one of the new enterprises there was a lot of talk going on about.

In the light of the fact that as of August 1 reputable bankers took over a block of stock and paid in something over $20,000,000, I am still of the opinion that a majority block of stock in this company would have no fair market value as of August 1, 1919, that you could ascertain, for the simple reason that there are only a few interests in this country that you would hope to go to if you wanted to dispose of the stock. Even if any of those interests were interested in doing the job, they would naturally have a very thorough examination made, and that would take a long time; and after a long time you hit something, so to speak—and I know that they just wouldn't do it.

Q. Well, now, suppose the investigation, however, by this interested group would have shown the property worth $12,000,000, what then? That would not have made any difference? A. I don't see how you could determine the fair market value for that block of stock any way you can possibly look at it: I just can't see it.

Q. Well, then, as I understand, it doesn't make any difference to you whether this block of leases was worth $12,000,000, or worth not one cent, in so far as determining whether the stock was of that value? A. If I was in the frame of mind of a purchaser, certainly it would make a great difference to me whether the values were there or not; but what I maintain is, that I do not believe, with those restrictions and with the stock tied up, you could possibly get anybody to buy it.

Q. What is your conception of the difficulty in a case like this? Is it this, that there can be no fair market value unless the possible purchaser of that stock or that property can readily turn it over to someone else? A. That naturally makes it more attractive. If you can turn something over, then you can determine what the fair market value is; but if you can't turn it over, how can you determine what the market value is?

Q. I am asking you this question. I do not believe you quite understand what I mean. Is it your position that the stock can have no fair market value unless it is free for immediate delivery and resale and redelivery to other persons? A. It probably has some nominal value, every enterprise has, more or less, standing on its own bottom, your Honor; but it depends on the type of the enterprise, on the speculative part of it, or a certain part of it. I mean, if it is something that is very hazardous and it is tied up for a period of time, no. If it is something of an old line business, with a value already about it, I would say yes. But in this instance, taking everything into consideration, I would say absolutely no.

Q. Taking into consideration only the facts that were stated in the hypothetical question, and making the assumptions that were made in the hypothetical question, not dwelling on your own knowledge of the subsequent events or of conditions preceding, would your answer be the same? A. Yes, sir, my answer would be the same, as far as determining any fair market value.

*By Mr. Angell.*

Q. In the course of your testimony did you mean to imply, on the assumption that the Duke-Knoles leases were worth on August 1, 1919, $12,000,000, bearing in mind the restrictive agreement, that the 1,007,834 shares of stock about which we are talking had no value at all? A. I did not mean to imply they did not have a speculative value. I think they had a speculative value. I meant to imply that I did not think they had a market value that it was possible to determine with any degree of accuracy.

Q. Do you know of any possible standard which can be used in determining with any reasonable accuracy the fair market value of these shares of stock when taking into consideration the assumption which I have given you? A. I do not think there is any standard.

* * * * * *

Q. I think you stated you had read the testimony of the witness Merriman on direct examination and that you had heard the cross-examination of the witness Merriman this morning, did you not? A. Yes, sir; that is correct.

Q. In reaching the conclusion which Mr. Merriman reached in respect to the value on August 1st of this 1,000,000 odd shares of stock, he assumed that the Tex-Penn leases had a fair market value on August 1, 1919, of $12,000,000; that the other leases which came in to the Transcontinental Oil Company, wholly or only partially developed, had a value of $460,000, the Boynton Refinery a value of $500,000, and cash and accounts receivable had a net value of $9,161,000, or a total tangible asset value of $22,121,000. He then proceeded, as you will recall, to add to that tangible value an extra $2,000,000 for what he termed going concern value. Where you have a company such as the Transcontinental Oil Company with no past earnings and no past history, is it, in your opinion, fair

or appropriate to add anything by way of going concern value in determining the aggregate of the asset value? A. Certainly not, not in this instance.

My reason for this conclusion is that you have a company made up of three of four units which were in the process of being brought together at the time this company was set up. The organization had not been consolidated, and there was no earning record back of it; they did not have their own trunk line, and I don't think there is any going value there. By going value I mean good will. To put it another way, the cost it would take to develop a sufficient and harmonious organization. Good will is created in a good many ways; by advertising, by developing a reputation for honesty and for integrity in operating the business; by the past history of the company, the management and, of course, the quality of the product in the market, if it is a manufacturing company.

Where any amount such as $2,000,000 is added as going value or good will to the tangible assets of a company, that factor is an element of uncertainty in determining the value of the stock of the company which owns the assets, because the good will or going value in any company is a question of one's opinion.

Q. Now, going further, the witness Merriman undertook to discount the value of the stock of the Transcontinental Oil Company on account of the restrictive agreement. Having reached the asset value figure of $24,000,000, he divides it by the number of shares outstanding, and he got a figure of $12 or $12.50 a share, excluding any consideration of the restrictive agreement. Coming to the restrictive agreement, he discounted the effect of the restriction in the following fashion: He said that under the restriction it was conceivable that the stock must be held for a period of five and a half months or perhaps longer. He approached the question from the standpoint of an investment banker and not from the standpoint of

an individual. The investment bankers, he said, turned over their money very rapidly. Thus, he says, the effect of the restriction in depressing value then turns upon the investment bankers' expected earning power of the money invested in the stock. On this basis the witness reduced the $12.50 value per share by 20 per cent. thereof, bringing it down to $10. Is that method in endeavoring to discount the effect of the restrictive agreements proper or a sound method, in your opinion? A. In my opinion it certainly is not sound.

Q. Why not? A. Why, it is purely an arbitrary figure. The best analogy that I can make of a thing of that kind is to go back to the farm. If I am going to sell you a horse to-day but I tell you I cannot deliver it to you for nine months and in the meantime he is running loose in a hazardous field full of pitfalls, and so forth, for the nine months, you are going to discount what you pay for the horse nine months now a great deal more than 10 per cent. of what you would pay to-morrow. I think that is unsound.

Q. Is there any method whereby you in your opinion can discount the effect of a restrictive agreement and arrive at a fair market value of the stock with any reasonable accuracy? A. I do not think there is. If it was put up to me to figure out from an uninterested standpoint in any situation, I do not know how you could do it. I do not believe it can be done.

Q. Is the need of considering the restrictive agreement a factor of certainty or uncertainty in valuation? A. Why, it makes it uncertain. May I qualify that just a minute as it pertains to this particular thing? You see, in this company, * * * this cash and so-called liquid working capital in this company is not free cash. The $9,000,000 that is cash in the company is not free to be just shut off to-morrow and redistributed to the stockholders, but is earmarked as working capital. That is what it is in there

for, and this is a very hazardous business and nobody can tell what is going to happen in a business of that kind over a period of seven months.

Q. Now, where you have cash or accounts receivable of $9,000,000 in a corporation and that cash and accounts receivable is committed for working capital in the acquisition of properties, is the presence of that $9,000,000 a factor of certainty in the valuation of the stock of the company or a factor of uncertainty? A. Well, there is not any question but that the $9,000,000 would strengthen the picture in any company it was in, but I still say that the fact it is to go for the acquiring of new properties and the development of present properties that it has certainly makes it as uncertain as anything could possibly be, because you do not know whether that $9,000,000 is going to be all out of the window at the end of seven months as the result of drilling dry holes or what it is going to be. Nobody can tell.

Q. Is there any way of gauging the fair market value of accounts receivable and cash so limited in the operations of the company? A. No, sir, it is not, in my opinion.

Mr. Angell: You may cross-examine.

*By Member Van Fossan.*

Q. Before you begin, there is one question I would like to ask: Suppose that we define fair market value as the price at which a willing seller and a willing buyer will deal, both being fairly advised of the surrounding facts, saying nothing more, would that alter your opinion as to fair market value? A. No, sir.

Q. Just a minute. Would that alter your opinion as to whether or not the stock in this case would have a fair market value? A. No.

Q. Can there be a fair market value for an admittedly speculative stock? A. I do not think you can have a fair market value that can be determined with any accuracy.

Q. Now, you are adding something I did not include in my definition. I specifically stated the definition of fair market value which I wished you to consider. A. I do not think there is any, your Honor.

Q. You do not think there is a fair market value for an admittedly speculative stock? A. No.

Q. Would a six months' earning record on a stock exchange of what was admittedly a speculative stock—there are such, I understand? A. Yes, sir.

Q. With a sales record at varying figures continuing for six months or a year, that would be no index of the fair market value? A. Well, let me get your question straight, sir.

Q. The question is— A. If you had a record of six months of earnings?

Q. Six months of sales. Just leave out of consideration the earnings. Sales and exchanges on the stock market of an admittedly speculative stock, running over a period of six months or a year, would that tend to establish a fair market value for that stock? A. I do not think it would, your Honor, for this reason: It would depend entirely on the type of the market. In other words, it would depend on whether it was a fictitious market or whether it was a real market.

Q. Assuming it is a real market, whatever you mean by that, and that it is not being rigged by the owners of this stock, that it is actually selling and there are men willing to buy this speculative stock and other men willing to sell, and that they deal over a period of six months or a year. A. That may give you some index as to what you might be able to get for a few shares of the stock, but not for block like a million shares. You might well——

Q. I did not say anything about a million shares. I am asking you the question whether or not such a record would tend to establish or would be any index of the fair market value of those shares of stock that were dealt in

or the shares of stock of that company? A. I do not think it would. I do not think it would because there are too many elements, your Honor, that go into that. You might take this room of people here and you might have a speculative stock to sell to this room full of people; there may have been a half dozen people in this room, for instance, that liked to play the races and are willing to take a shot on a pure speculation, whereas when you sold to the six of them you might absorb your whole market. So you cannot judge that is going to set any market value.

Q. That is outside of the proposition I stated to you. The proposition as I stated to you was a record of from six months to a year of actual sales on the Exchange. That means either that you have an inexhaustible supply of suckers or that you have found that people are willing to buy and sell that stock, does it not? A. I suppose it would.

Q. Does that, in your judgment, tend to establish a fair market value for a speculative stock? A. It does not. I cannot quite make it clear to you why in my mind it does not. It is because you may have a market, say, for six months past, right up until this minute, where there have been a certain amount of transactions in any security. Conditions may change so that instead of those prices being up here, if you attempted to realize on anything you had or you asked this minute what the market was, it would fade away, so you could not determine it. I do not think you can determine it on anything of that kind.

Q. Do you think stock market sales are ever an index of the fair market value of any stock? A. Yes.

Q. When? A. When you get an old seasoned company where you are trading in volume, where there is a free market there all the time, and I think it is fair as of a certain time.

Q. Where do you draw the line? A. That is a pretty hard place to know. It is a question of one's opinion. Your opinion might be entirely different from mine.

Q. Where do you draw the line between an old reliable stock and a speculative stock? A. If we take any of the old line companies like General Electric, the U. S. Steel, or any of the old line companies that have been through the mill, so to speak, and have reached a point of stabilization as far as their operations are concerned.

Q. Would you generalize by saying that any stock listed on the New York Stock Exchange is in the category of an established stock? A. There are so many factors that go to make up what is an established fact——

Q. I am attempting to paraphrase what you said about an old line stock. Would you say that sales on the New York Stock Exchange would establish the fair market value of any of the shares of stock listed on that Exchange? A. I would say it would establish the fair market value on a great many of the stocks provided it was an amount that you had to sell that the market would absorb as of that day; yes, I believe that would set a fair market value.

Q. Well, what about the Curb Exchange? A. I think the Curb Exchange would largely prevail the same. There are some mighty good stocks on the Curb Exchange. I would say there are a number of stocks on there that would do the same thing. If you had a block of a hundred shares of stock to-day and you wanted to realize, stock of an old seasoned company, you would look at the market to see what was in your mind as a fair market value and if you could realize on it and it was there, I would call that a fair market value, whereas if you had 10,000 shares of that stock, you could not sell it because that would be the market value, because if you had that price——

*By the Presiding Member.*

Q. How would you fix the value under those circumstances then? A. I do not think you can.

Q. It would not make any difference to you what the character of the security was? A. Oh, yes, it would.

Q. I know, but if there is a sufficient volume to beat down the price, you would say then that you could not determine the fair market value? A. No, if you were satisfied in your mind that you had a stable business, your Honor, with all things equal, unless there was something unforeseen, you could not see, maybe six months from now it is just as good as to-day. You made up your mind you would feed this out through the market and you got time in which to do it, then I would say you would be all right. Under those conditions, you would not pay as much for it as you would for an amount that you knew you could sell right away.

Q. Well, in this question that you are being asked, did you assume that on August 1st they must get the cash right then and there for this entire block? A. I am not assuming that at all, because I don't know that that is the real question involved. I would think within a reasonable length of time they would have to if you were going to treat it as cash, yes, sir.

Q. What would you call a reasonable time? A. I do not know how you would interpret it legally. I would certainly think within a week or two, or something like that. I think I would be taking a terrible chance for that time on a stock of this kind.

Q. I take it that any stock or any bond that is thrown on the market in sufficient volume can temporarily break the price, Government bonds included? A. Yes, that is right, your Honor; it is a question of one's judgment. Then probably you are wrong about three times out of four. There are so many factors that enter into each one of these that it is hard to say.

The Presiding Member: Proceed, Mr. Foley.

*Cross-examination by Mr. Foley.*

I have been studying this case about a week or more. I have read the testimony of Mr. Merriman and have heard his cross-examination. I have not read any other testimony. All told, I have put on this case probably the equivalent of twenty-four hours in solid time. That is, three or four hours a day, or somewhere in that neighborhood during the last week.

I was in the Ranger Field about 1920 or 1921 looking it over with a view to investment and bringing myself up to date in the industry. We were in the oil industry at that time. We had our own company which I was looking after, and I think I visited practically every new field that came in.

I was associated at that time with Col. William Boyce Thompson and my present partner, Theodore Schultz. I am now a partner in the firm of Munds, Winslow & Potter. They are members of the New York Stock Exchange and the firm of Theodore Schultz & Company is an investment banking house. It is a corporation and is not a member of the New York Stock Exchange. It is engaged in business as an investment banker. We do no retail distribution. We take positions in a company and put a substantial amount of money in a company and help develop it. Later on, if we want to get more capital in there, we get a house that is a house of issue, a member of the Stock Exchange, to make the public offering. By taking a position in a company, I mean we buy stock in it. In other words, our interest in it was one of ownership. We might say, drawing an analogy, that the corporation of Theodore Schultz & Company is not a retail merchant of securities. We have taken positions in a good many companies and have picked certain individuals who would lend strength to the company and have made private sales to them to get them interested in the company, but not with the idea of

making any resale on any commission basis. We usually hold our securities for a time and then sell them, but, as I explained to you, we have been interested in the Continental Oil Company for twelve years and we still have our interest and expect to keep it.

Q. I think that the first question put to you by your counsel assumed that the Tex-Penn-Duke-Knoles leases were worth $12,000,000, and assumed there were two lots of wildcat leases worth in the aggregate some $460,000; that there was something over $9,000,000 of cash or accounts receivable in the treasury; that the Boynton Refinery was worth in the neighborhood of $500,000, making a total value, I think, of something in the neighborhood of $22,121,000. Now, on the basis of that assumption, you tell us that the 1,007,834 shares of the stock of that company has no fair market value. Do you still adhere to that? A. I still adhere that it has no fair market value that could be determined with any accuracy. I maintain it has a speculative value but not a fair value. Yes, I maintain that.

Q. Can you not determine speculative value with fair accuracy? A. I do not think you can.

There are speculative stocks that sell on the New York Stock Exchange. What I mean by a speculative stock, as far as the New York Stock Exchange is concerned, is one where there is some company, such as a chemical corporation, which is developing a new product which may or may not have a big market, and it looks as though they are going to succeed. If they do, naturally it is going to enhance the value of the stock; if they do not, the stock is worth what it is selling for. I am not referring to any specific company. I say any chemical company that may have a new product coming along that is in the laboratory state that the management thinks they have licked and it is going to come through. Of course, that lends an intangible value to the stock, which may or may not ma-

terialize. The company may be a perfectly sound company. There are some opportunities for speculative profit above the present market.

Q. Then the only speculative stock is stock of an unsound company, is that it? A. No—no, sir.

Q. What do you mean by a speculative stock? A. Just exactly what I told you.

Q. Please tell me again. A. Where the stock is in a perfectly sound company, it may be selling to-day at, say, $10 a share. You and I may go and investigate that company, talk with the management of the company, and we find they have certain plans coming along. If these plans materialize the stock may be worth $20 a share. Then the natural thing to do, the public would say, "Let's go and buy a few shares. It is worth what it is selling for. It is a sound company. If these fellows come through it has quite a speculative feature to it." That is what I mean. I do not mean it is not sound.

Whether the price that you buy that stock for is its fair market value depends entirely on the market and the volume of the market. I would consider it the fair market value for quantities that the market would absorb at any time. I do not know whether there are any other kinds of speculative stocks besides those of the kind I have described.

The stock of the Transcontinental Oil Company as of August 1, 1919, is a highly speculative stock. I do not see how you can value it. If I were told that on January 9, 1920, after this restrictive agreement was off, there were 52,500 shares of Transcontinental Oil Company stock sold at a high of 35⅝ and a low of 33, or a close of 34⅛, I would say that a large block of it would nevertheless have no fair market value that you could determine. You might be able to sell 10 shares or a hundred shares, but you could not tell whether the 52,500 shares had a fair market value unless you could analyze those sales.

Q. Do you mean to say that the 52,500 shares that actually sold on that day had no fair market value? A. No. I still say that in itself could not determine the market value unless you knew what type those sales were.

Mr. Foley: Now, read the question.

(The last question put to the witness by Mr. Foley was read as recorded by the reporter.)

The Witness: I would say this, that that might determine a fair market value for a few hundred shares. I would not say it would determine the fair market value for a few thousand shares, regardless of whether there was 50,000 shares there or not. I would want to know the record up to that time and the record immediately after that, who made the sales and what the sales were, before I would say there was any fair market value.

*By Mr. Foley.*

Q. You still have not answered the question. I want to know if those 52,500 shares had a fair market value? A. I say the fact——

Mr. Angell: Just a minute. I think, your Honor, he has answered the question.

Mr. Foley: I do not think he has.

Mr. Angell: He has only the bare facts given him. He cannot answer it categorically.

The Presiding Member: Let us see what he can do.

The Witness: I have already stated, sir, I don't think you can determine whether it has this market value that he says unless you know the facts in the case.

*By Mr. Foley.*

Q. I will repeat the question to you. If I tell you that 52,500 shares of Transcontinental Oil Company stock were sold on January 9, 1920, at a high of 35⅝ and a low of 33, and that the stock closed at 34⅛, will you tell me that those 52,500 shares had no fair market value on January 9, 1920? A. I certainly would tell you that. I would not attempt to answer your question without trying to know the facts. Unless I did know the facts, I would say that did not determine the market value for the simple reason that you would have to know the type of those transactions. In other words, you might have one group buying that stock and another group selling that stock, and the actual net trades on that day may not have been a thousand shares; so that if you are sitting on the outside as a holder of 10,000 shares and attempted to sell a thousand in that market you would not sell them. So I do not think that determines market value.

Q. We will take a further case: I will give you some facts regarding another stock. Suppose a hundred thousand shares of U. S. Steel are sold to-day at an average price of $35 a share. Does that fix the fair market value of all of the hundred thousand shares of U. S. Steel? A. I do not think it fixes the fair market value. It depends—let me ask you one question.

Q. Go ahead and answer my question. A. I do not think it does, sir; not a hundred thousand shares.

Q. It does not fix the value? A. No, sir; not for a hundred thousand shares. It may fix the value for a hundred shares.

Q. Although a hundred thousand shares are sold, yet the price at which they are sold does not fix the fair market value; is that right? A. It would be right as far as I am concerned, sir. If I held 10,000 shares of that stock and were going to buy it as of that date, if I were in posi-

tion of the buyer I would not be governed by what 10,000 shares sold for that day or what 100,000 shares sold for that day. That is a question of one's opinion.

Q. Suppose, now, Mr. Ingels, I should tell you that on January 12, 1920, 220,000 shares of Transcontinental Oil Company stock were sold at a high of 38¾, a low for the day of 30⅛, and a close for the day of 31½, would you say that the 220,000 shares of Transcontinental Oil Company stock had no fair market value on January 12, 1920? A. I would say that they had no fair market value that you could determine because the question goes right back to the same thing, who is making the sales and what is back of it? What do those transactions mean? Certainly here is something right on the face of it.

Q. Unless you know, even in the case of U. S. Steel or American Telephone & Telegraph Company, or any other standard stock on the exchange, just who it is who is making these sales, the sales are no indication whatever of the fair market value of the stock? A. Not to me. If I thought it was a group operating in the stock, I would not care what stock it was, I would not say that determined the fair market value. It depends on whether it was a natural market or otherwise.

Q. You are assuming, then, that the market for Transcontinental Oil Company stock was an unnatural or rigged market, is that it? A. No, sir; I am not assuming that at all.

Q. Are you assuming it was a natural market? A. No, sir; I am not making any assumption at all, because I do not know the facts.

Q. Well, how can you say that the sales of the stock were no indication of its fair value? A. I say, if I knew the facts and it was a free and open market and a natural market, then I would be more inclined to agree with you than I am when I do not know the facts. I do not think it is a question for you to put to me to answer that and

make a direct answer on it when you know I have not the facts.

Q. If you assume that there was a free and open market in Transcontinental Oil Company stock on January 12, would you say that the sale of 220,000 shares was no indication of a fair market value? A. I say it would be an indication of fair value of a limited number of shares, I agree with you on that.

Q. For the 220,000 shares? A. Not for the 220,000 shares, no, sir.

Q. Not for them? A. No, sir.

Q. Although they were actually sold on that day? A. Yes, sir.

Q. Now, you did not go into the business of dealing in stocks until some time in 1922, did you? A. Yes, sir. I went into the business of buying and selling stocks in 1912, sir.

Q. 1912? A. Yes, sir, twenty years ago.

Q. Do you mean for yourself? A. The Realty Guaranty & Trust Company of Youngstown.

Q. You acted for the company? The company bought, did it not? A. Yes, sure, the company bought: yes, sir.

Q. You were acting as agent for the company in making the purchases? A. I was an officer of the company and the affairs of the company were conducted like the affairs of any company is by following the recommendations of a committee.

Q. Now, you do not think there is any such thing as an assembly value to a piece of property, do you? A. Just exactly what do you mean by that?

Q. If you want to form an oil company, or I want to form an oil company, I need for one thing a certain amount of acreage. If I want the thing rounded out I need in addition a refinery; I need pipe lines, and then I want something on the selling end of it, so I want some oil and gas stations, and things of that sort, and I want some

working capital. I get all these things together. If you add them up separately they will reach a certain figure, say $20,000,000. Do you not think there is something to be added to take care of the fact I have gathered all those properties together and have them integrated into one whole? A. Well, in answering that question, it would depend primarily on the properties themselves and on the reputation of the products and the history of the properties that you had gotten in there. If you had gotten together some companies with an earning record back of them and with all that, then I would say yes, there is an intangible value there, but it is not a value that you would want to put on your balance sheet.

Q. You say there is such a value, though? A. Yes, sir, but it is a very intangible value.

Q. Would you not have to pay something to somebody who had assembled all these properties for you? I mean, would you not have to pay something in addition to the actual cost of these various properties? A. Yes, but you pay for a lot of things you don't get your money's worth out of. You may pay a fellow for getting properties together and you would be much better off if you had not gotten them together. It depends on what the result of the properties as a unit is going to be as to whether or not they are worth anything. They may be an absolute total loss to you.

If you try to sell an integrated property you do not necessarily get a better price for it than you could selling portions piecemeal; it depends on the units. If you had certain units that would fit into and help round some other operation, you would get a better pro rata price for that portion of it than you would if you tried to sell something that would not fit into it. If you are getting into an oil situation you have a limited market because you have only a few companies in the country that could take it and that is the only place you can get rid of it. It is a

question of whether the operations overlap. There are a thousand and one factors that would determine the price.

Q. Now, you said something about 1,007,834 shares of stock, which happens to be the amount of stock of the Transcontinental Oil Company which you are now valuing. I suppose the very size of that block of stock tends to take away any value that might have, is that correct? A. Oh, no.

Q. No? A. I would not say that at all.

Q. What effect does it have, then? A. The size of the block would affect your ability to sell it, if there is any value there. I am not talking about market value now. Of course, there may be some value behind the stock, but we are talking about market values, aren't we?

Q. I am talking about fair market value. A. Yes. I would say it would be much easier for you if you owned 100 shares of Transcontinental stock, you could sell the 100 shares without any trouble at all. If you had 10,000 shares or a hundred thousand or a million shares of stock, and you wanted to determine what it was worth to you, it would be worth what you could sell it for and you could not sell it.

I know something about the Anaconda Copper's purchase of control of the Chile Copper Company. I have heard about it in Wall Street. If the price paid was $35 a share while the stock was selling in the open market for $25 a share, that would be a different situation, because that was where one company wanted to control another and the controlling stock was probably bought. If you had your eye on a certain operation that you wanted in your business and you could go out and buy the majority stock control of it, you would naturally be willing to pay a good figure for it.

Q. In the question as given you, Mr. Ingels, it was stated that the stock of the Transcontinental Oil Company consisted of 2,000,000 shares. The block of stock received by

Messrs. Benedum and Parriott amounted to 1,007,834 shares. That, you will observe, would give control of the Transcontinental Oil Company, would it not? A. Yes, sir.

Q. Do you think that that might not be a factor of added value to that stock? A. Well, how is anybody going to guess that? It might be if you had some company that came along and wanted to buy control of the Transcontinental. You are assuming when you answer that that you have somebody that wanted to buy control of the Transcontinental. That is the only circumstance I can imagine where it would give an enhanced value.

If you had a company that wanted to buy control of the Transcontinental Oil Company as of August 1, 1919, that stock would then have had a fair market value if you had someone who wanted to buy it. As I understand it, fair market value is the price at which a buyer and a seller could agree on, both well acquainted with the facts, and with no coercion on either side. You would have to get somebody who is a mindreader to tell you what the fair market value would be if you had someone who wanted to buy control. I couldn't tell you that.

I do not think that the price which was paid for Transcontinental Oil Company's stock by the bankers, which works out to approximately $27 a share, is any indication of the value of the 1,007,834 shares of stock of the Transcontinental Oil Company, for this reason: The bankers, when they step in and buy an operation of this kind, they are buying that stock to resell. They are simply buying it because they think they can resell it at a profit and I do not think that has anything to do with the fair market value of the other block of stock.

Sales of Transcontinental stocks about the time when the restriction on the sale of this stock came to an end on January 8, 1920, are no indication of a fair market value for a large block of that stock. If you had a reasonable number of shares, a few shares, you could probably from day to day go out and sell them in the market.

Q. Now, don't you think there might be some fair market value which you could arrive at if one of the large oil companies should come to you and say, "Mr. Ingels, we are thinking of buying 1,007,834 shares of the stock of the Transcontinental Oil Company"? That is, they came to you on August 1, 1919. "We want you to tell us how much we ought to pay for that stock." What would you have answered? A. They would not come to me. They would not come to me and say, "What should we pay for that stock?"

Q. They would come to you for advice? A. Any company that had made up its mind to do that thing would have analyzed the whole thing and figured out for themselves just exactly what they thought they could earn with the properties and would base their offering price on what they felt they could earn on the properties.

Q. That is all very nice, but it does not answer my question. I said, assuming that the executives of an oil company had come to you on August 1, 1919, and had told you that the Tex-Penn leases were worth $12,000,000 and told you this wildcat acreage had an aggregate value of $460,000 and all the rest of it. I think you carry it in mind. Then said to you: "Now, Mr. Ingels, we want your advice. We want to buy control of the Transcontinental Oil Company. Tell us what you think we would be justified in offering for that stock."

Mr. Angell: With the restriction or without it?

Mr. Foley: That is all right.

The Witness: I would not feel that I would be in position to make any recommendation to them if that question were put up to me, frankly.

*By Mr. Foley.*

Q. You would not feel qualified to express an opinion as to the value of that stock, would you? A. I certainly would not, offhand, without studying the whole situation. I do not think anyone would.

DAVID DONOGHUE was recalled as a witness on behalf of the petitioners and having been previously sworn, testified further as follows:

I have prepared a diagram showing the depth to which some nineteen of the deeper wells located in the Desdemona Field were drilled and I have also prepared supporting statistics on a map showing the location of such nineteen wells.

Q. I show you these sheets, the diagram, the supporting figures and the map, and ask you whether those were prepared by you? A. Yes, sir.

Q. Will you explain briefly those three sheets and state the sources from which you took the information? A. The sheet marked "Tabulation" has a sub-title showing various wells drilled in the Desdemona Field prior to August 1, 1919, which penetrated a depth of 200 feet or more below the top of the lime, Marble Falls. In this I have given the key number according to Petitioner's Exhibit 63, the company, the lease, the well number, the date completed during the year 1919, the total depth and remarks. This information was taken from the so-called geological sand cards and in some instances from the engineering sand cards and in one particular instance the depth of the Ellenberger was taken from the University of Texas Bulletin 1849. Where I had no top of lime on these sand cards or any information from which I could deduce what the top of the lime was, I took it off of Mr. Matson's subsurface contour map as presented here by him. The chart is a graphic representation showing the penetration of these wells below the top of the lime, giving the position of the Ellenberger approximately. The map is merely a photostat copy of Exhibit AS on which the deep wells are circled in red and the key number as found in Exhibit 63 was placed.

I selected these nineteen wells rather at random. I ran through the cards and picked out those which on the face of them showed to be deeper than the Desdemona sand zone. Then I took Exhibit AS and went over it carefully and picked the deep wells shown on them.

Mr. Angell: I am now offering this diagram and supporting sheets showing the statistics and the accompanying map. The purpose of the offer, your Honor, is simply to refute the testimony of the Government's witnesses that if the Desdemona wells had been drilled deeper they might be expected to have produced more oil.

Mr. Fullerton: What particular evidence of the respondent is this intended to rebut?

Mr. Angell: It is my recollection of the testimony of certain respondent's witnesses that if the Desdemona wells had been drilled to a depth which was found to pay out in the Ranger Field additional oil might be expected to be found. This chart indicates that at least nineteen wells in the Desdemona Field were drilled to a depth 200 or more down below the Marble Falls, the top of the Marble Falls and in three or four instances the drilling went below the top of the Ellenberg Lime.

*Cross-examination by Mr. Fullerton.*

This sheet (later admitted in evidence as Exhibit 108-B), containing the vertical lines that indicate the depth of the wells, does not purport in anywise to be a cross-section. It is a chart and is so labelled. The Desdemona sand zone, which is depicted in red and is horizontal, was not intended to show the contour of that particular streak. That particular red streak runs from 20 to 60 feet. I usually say the Desdemona zone is within 25 to 50

feet. Your witness Mr. Ravicz stated 20 to 60 feet was the depth and I put it that way. The vertical scale appears on the left-hand margin. There is no horizontal scale. On a chart of that type you need no horizontal scale, since I am trying to show relative depth and not relative positions. The chart shows exactly the relative depth below the top of the lime; it doesn't show relative depths with regard to sea level. It shows the penetration into the lime, into the area where we were looking for production prior to August 1, 1919, in the Bend. Every point on the line indicating the Desdemona sand zone is not equidistant down from sea level. It is equidistant from the top of the Marble Falls.

Objection by Mr. Fullerton to the admission of the map and charts on the ground that the chart is distorted because of the fact that the basis from which the witness starts, the top of the lime, is not horizontal and has been shown as horizontal, and on the further ground that the map and charts are irrelevant. Overruled and exception allowed.

The map and charts so offered were received in evidence as Petitioner's Exhibits Nos. 108, 108a and 108b (see Folder of Unprinted Exhibits for No. 108. Exhibit No. 108a is reprinted in Volume of Exhibits. See lithographic reproduction of Exhibit 108b opposite this page).

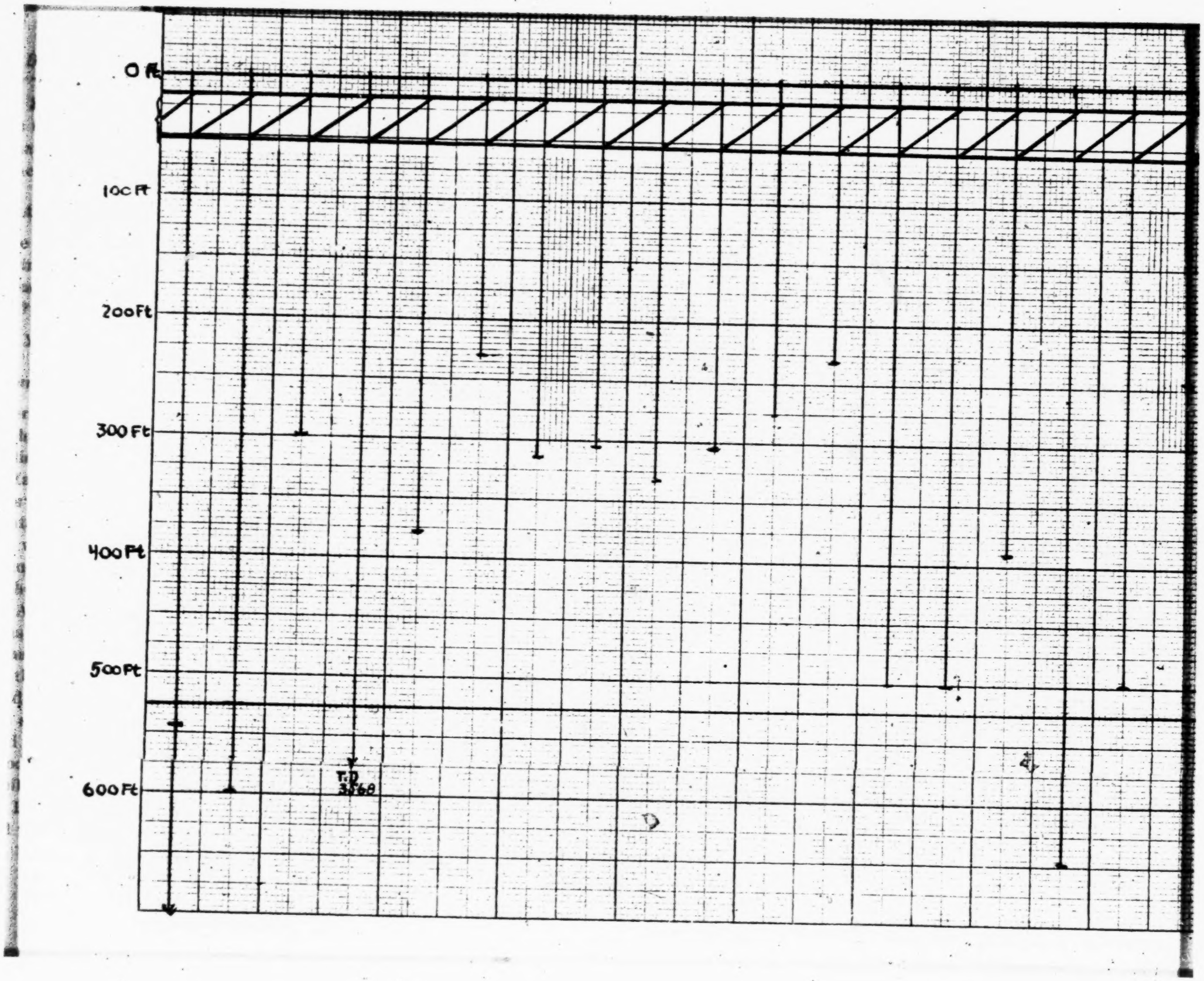
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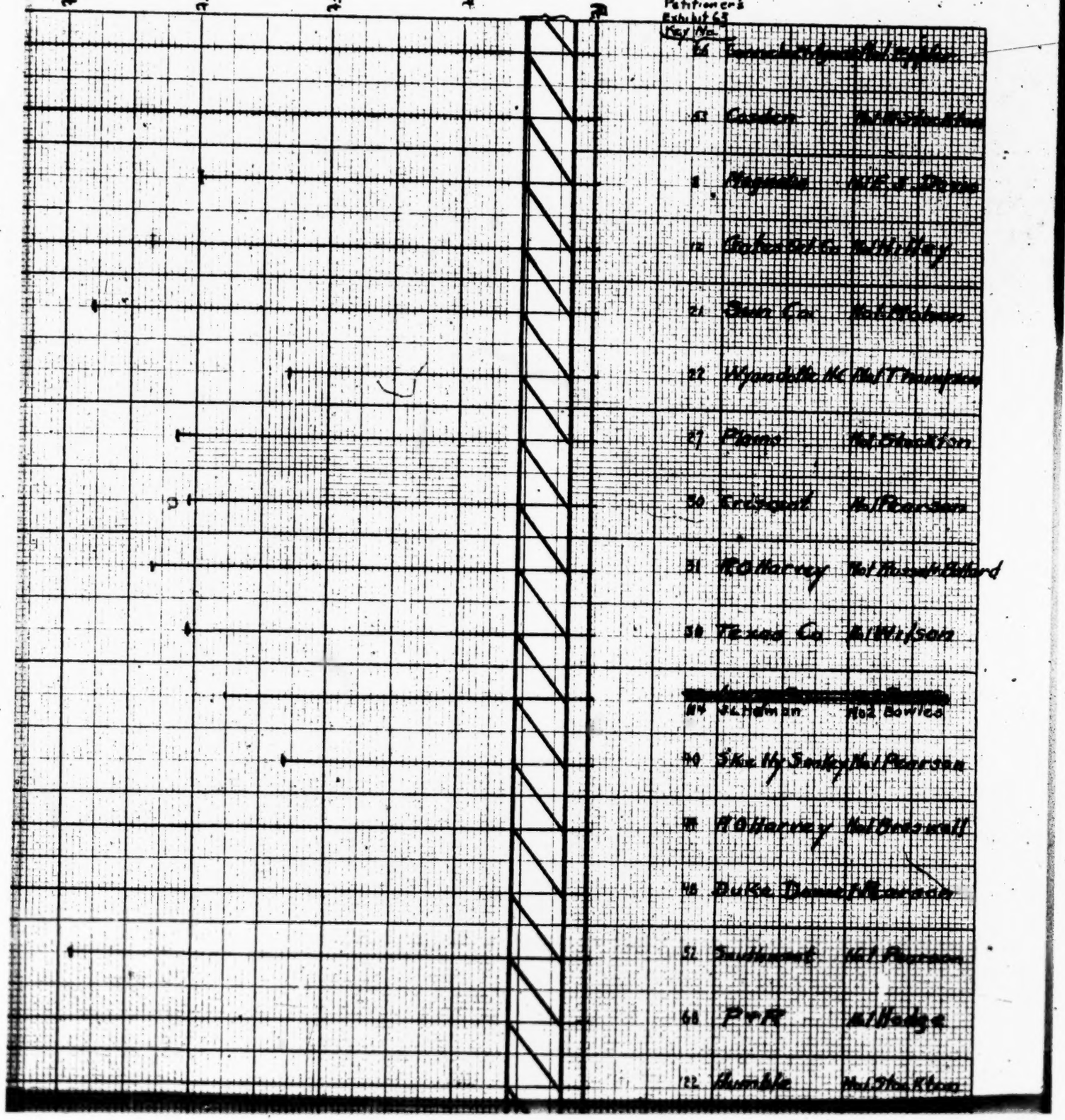
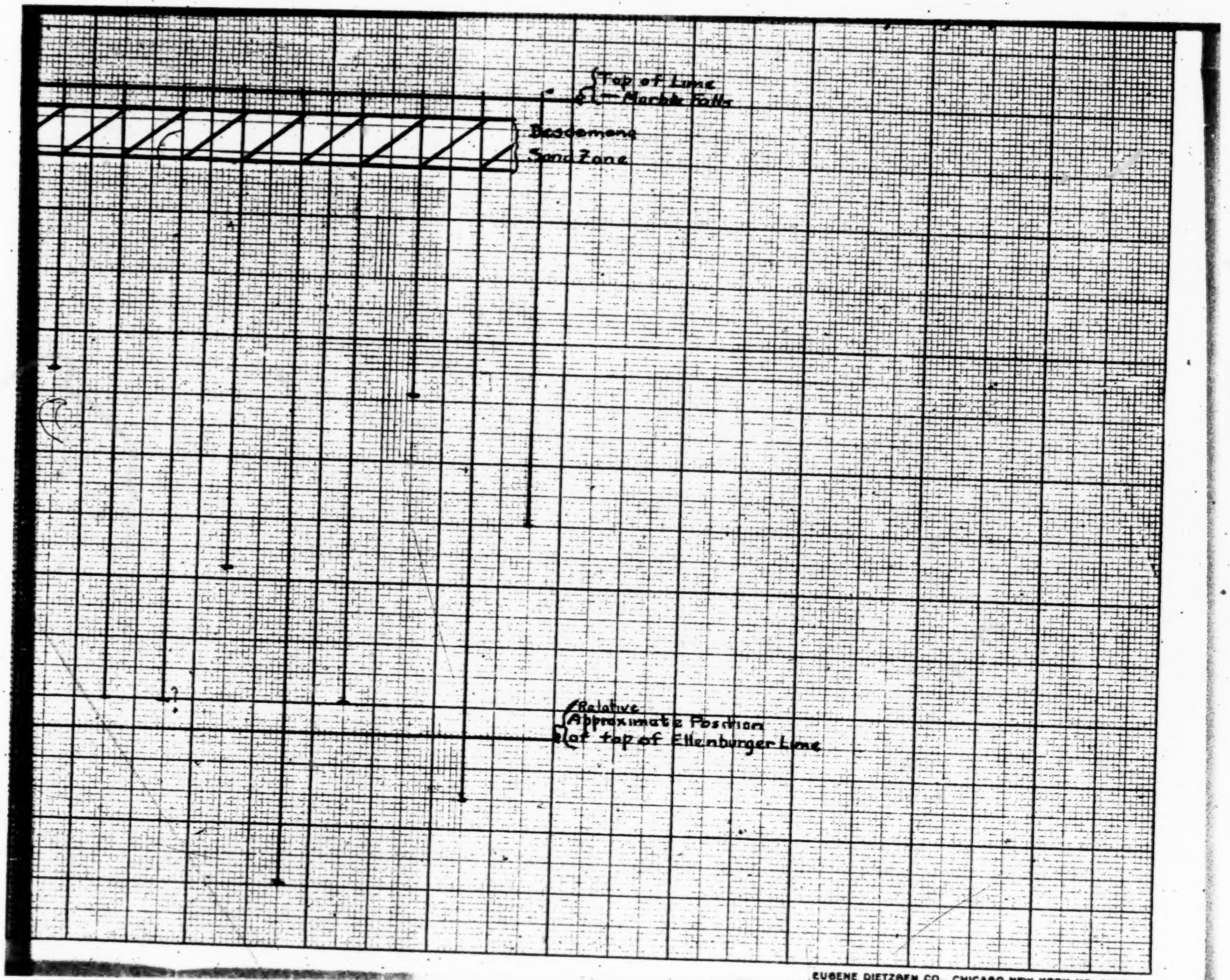
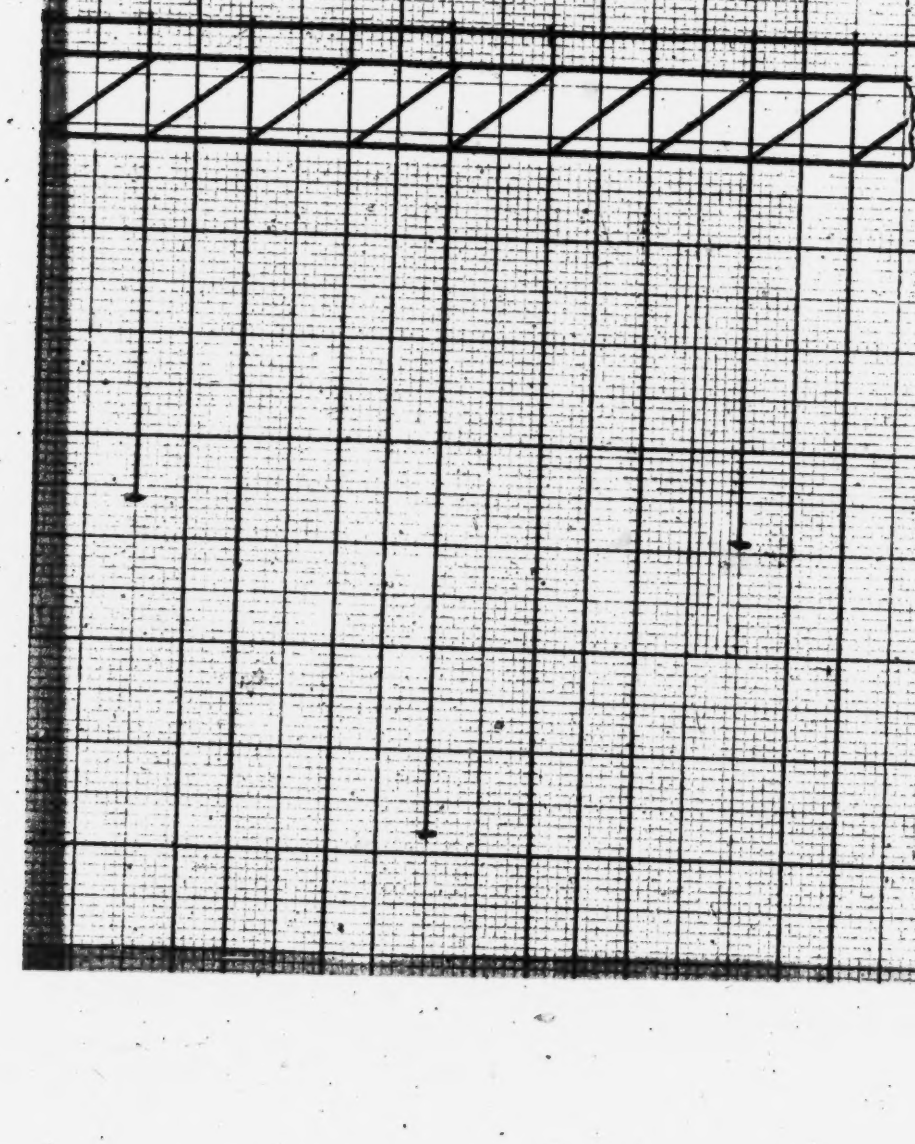
EXHIBIT 108






EUGENE DIETZGEN CO., CHICAGO-NEW YORK NO. 346 D X

# Chart
showing
Penetration below Top of Lime
of
Various Wells
drilled in the
Desdemona Field
Prior to August 1, 1919



Mr. Angell: I might call your Honor's attention to the fact that the statement my brother Fullerton made in this connection does not correspond with the witness' testimony.

*By Mr. Angell.*

Q. The cards to which you referred, the geological and engineering cards, were the so-called geological and engineering sand cards of the Gulf Production Company, were they not? A. Yes, sir.

Mr. Angell: You may cross-examine.

*Cross-examination.*

Q. Were any of these wells which you have depicted on the chart as dry in the lower portions of the Marble Falls—did those wells find any oil in the upper portion of the Marble Falls lime? A. Mr. Fullerton, your question does not represent the true facts. I merely took the statements that were given on the sand cards as to whether the well was dry. That does not purport to show where the production was from. There was some small production at the horizon of the Ranger sand and at Desdemona prior to August 1, 1919. It was insignificant. It showed there was nothing there.

Q. What well was that? A. Why, there were several wells in there. If you want me to go over them, take the cards and go through them tediously, I will be glad to do it. It is so unimportant I do not think it is necessary.

Q. Did any of these wells which are shown on your chart produce in any horizon? A. Well, some of them got a little oil at horizons below the Desdemona sand. Some of them I am quite sure produced from the Desdemona sand and were carried deeper. They were all small wells, however, including those that went down to the south

which you have as 260 some odd barrels and that never made more than 15 or 20 barrels a day.

Mr. Fullerton: That is all.

Mr. Angell: That is all, your Honor. The petitioners will close.

Mr. Fullerton: May respondent request permission to withdraw those exhibits which are marked for identification but never offered or received in evidence?

The Presiding Member: Very well. Does that close the case?

Mr. Angell: Yes.

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Hearing at Washington, D. C., on the 18th day of July, 1935, at 10 o'clock A. M.

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The above-entitled cause came on for hearing on this the 18th day of July, 1935, before the Honorable C. Rogers Arundell (presiding), the Honorable Ernest H. Van Fossan, and the Honorable J. Russell Leech, Members of the United States Board of Tax Appeals, at Washington, D. C., pursuant to notice of hearing heretofore given; whereupon the following proceedings were had and testimony heard, to wit:

APPEARANCES:

MONTGOMERY B. ANGELL, Esq., WESTON VERNON, JR., Esq., J. C. ADAMS, Esq., and HARRY FRIEDMAN, Esq., appearing on behalf of all petitioners.

JOHN S. WELLER, Esq., and JOHN O. WICKS, Esq., appearing for the petitioner M. L. Benedum.

BROOKS FULLERTON, Esq., and OTTAMAR HAMELE, Esq. (ROBERT H. JACKSON, Esq., General Counsel, Bureau of Internal Revenue), on behalf of the Commissioner of Internal Revenue, respondent.

PROCEEDINGS.

The Clerk: Tex-Penn Oil Company, Docket No. 11539; F. B. Parriott, Docket No. 30989, and M. L. Benedum, Docket No. 30990.

The Presiding Member: The cases are here under Rule 50 settlement. There are certain objections filed by the petitioner to the proposed computations of the Government.

Mr. Angell: Do we take the lead, your Honor?

The Presiding Member: I would say so.

Mr. Fullerton: I filed a motion yesterday for additional findings but I doubt if the petitioners have had a chance to receive it as yet.

The Presiding Member: We will have to consider that after the consideration of this matter.

Mr. Fullerton: The motion for additional findings?

The Presiding Member: Yes.

STATEMENT FOR PETITIONERS.

Mr. Angell: If your Honors please, under Rule 50 as I understand it, it devolves upon the losing party to file objections to the Government's computation, and also to file its own counter-computation. In making objections and filing the counter-computation we must approach the problem from the standpoint solely of the Board's findings of fact and the Board's decision. We are not at liberty to advance any further contentions, but must restrict ourselves in that fashion. So that, what I have to say I want it to be clearly understood is my endeavor to look at the matter through your eyes and not through my own.

Primarily our objections to the Government's computation in these three cases have had to do with the matter of basis, and for simplicity I think it would be well to consider the basis in the Tex-Penn case first, and then secondly in the two individual cases.

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Primarily our objections to the Government's computation in these three cases have had to do with the matter of basis, and for simplicity I think it would be well to consider the basis in the Tex-Penn case first, and then secondly in the two individual cases.

Now, from the standpoint of basis it is essential to determine cost or basis of the several TexPenn assets which passed on the transaction to the Transcontinental Oil Company. Let me list those assets, the basis of which we must determine in order to compute the deficiency: First, as to the warehouse supplies and well farm investment or cost to the petitioner, the Commissioner by his methods does not reflect that, and, secondly, as to the two-eighths interest in the Duke-Knoles properties which were acquired by the Tex-Penn on October 31, 1918, that transaction in form was this: The five individuals subscribed for 4,000 shares of the stock of the Tex-Penn Oil Company, which was all of the shares of stock outstanding at the time. They paid over to the Tex-Penn Company a check for $100,000, which simply and in accordance with the actual minutes of the Tex-Penn Oil Company was a rebate back to the five individuals for the acquisition of the two-eighths interest in the Duke-Knoles leases. We believe that the substance of that transaction and not the form of it should govern and that the basis to the Tex-Penn of the two-eighths is the fair value of the stock of Tex-Penn which was issued in exchange for that two-eighths interest in the leases. If, of course, the form is followed, then the basis of the two-eighths interest would be but the $100,000.

In the following year, I think on July 24, 1919, the Tex-Penn Oil Company acquired additional property for stock, for additional stock. That property consisted of an option on some South American leases and the so-called Oldham County properties and so-called Sutton County property. At that time on the acquisition of the properties the Tex-Penn Oil Company issued in exchange therefor 66,880 shares of its stock, and we submit, if your Honors please, that the basis of the properties so acquired in 1919 is the fair market value of the 66,880 shares of stock.

Finally, the Tex-Penn Oil Company acquired certain other additional Texas properties and some Louisiana

properties from time to time and for these properties, while the Board has made no finding the record would indicate that the Tex-Penn Oil Company paid $63,223.29 in cash. The reference of record to that is page 427.

The Presiding Member: Has that been allowed in the respondent's recomputation?

Mr. Angell: No, your Honor, not in that form. I am coming to that. I do not understand how the respondent has computed the basis of these leases.

Then, of course, there is the actual organization expenses of some $11,000 which both parties concede is a proper cost in figuring the taxable gain. That, in brief, is the Tex-Penn problem.

Now, may I turn to the Government's computation of basis. They include inventory and warehouse supplies at cost, namely, $158,418.25. They also include the well farm investment cost, $633,828.82, and the organization expenses, $11,394.90, and then there is a computation involving leaseholds, and all I can do, your Honors, is to point out how the Government apparently makes that computation with respect to leaseholds, for I think the computation is wholly meaningless and unsound. The figure for all leaseholds of $1,835,223.29 represents the figure appearing on the Tex-Penn balance sheet of July 31, 1919, as found by the Board in Finding 79 on page 27 of its report.

In Finding 80, just below the balance sheet, the Board finds that the leaseholds included in the balance sheet covered the assignment of the two-eights interest in the Duke-Knoles leases at a figure of $100,000. In addition to these Duke-Knoles leases, the Transcontinental Oil Company acquired from the Tex-Penn what, in substance, is five classes of property: First, the South American option; second, the Oldham properties; third, the Sutton properties; fourth, certain Louisiana properties; and, fifth, certain other Texas properties. It was stipulated that the

aggregate value of these five classes of properties was $221,500 on August 1, 1919, and the Board has so found in its Finding No. 80.

In the Government's computation with respect to leaseholds the Government starts with the balance sheet figure of $1,835,223.29, and then, apparently, deducts from that balance sheet figure the difference between the par value of the 66,880 shares of stock which were issued not for the five classes of property, but only for three of the five, to wit, the South American options, the Oldham County properties, and the Sutton County properties and the stipulated value of $221,500 which, as the Board found in Finding 80, is the value, not the cost but the value of the five groups of properties, not three, in respect to which the 66,880 shares of stock were issued.

The Presiding Member: If anything, isn't that a concession to you?

Mr. Angell: I think not, your Honor.

The Presiding Member: Why not?

Mr. Angell: The cost of the three properties, the South American property—the basis of the three properties to Tex-Penn, namely, the South American option, the Oldham County and the Sutton County properties, was the fair market value of the stock of the Tex-Penn which the Tex-Penn gave for those properties, namely, 66,880 shares, or a block of stock roughly representing nearly the entire capital stock of Tex-Penn at the time. Now, the Board's finding that the Tex-Penn received from the Transcontinental the equivalent of $7,000,000 for all of its assets obviously is far in excess of any allowance which the Government has made, for if you follow through this Government computation you find that the net allowance by way of basis or cost of these leases to Tex-Penn represent only $384,723.29, of which $100,000 covers the two-eighths interest acquired in the Duke-Knoles properties in 1918.

The Presiding Member: Your meaning is not clear on this other point that you argue. As I understand it, these five groups of property have a value stipulated of $221,500.

Mr. Angell: Correct, your Honor.

The Presiding Member: There was issued 66,880 shares of stock for a portion of that property.

Mr. Angell: That is correct.

The Presiding Member: I suppose, as far as the record shows, there was nothing issued for the balance.

Mr. Angell: Two of those classes of property, namely, the additional Texas properties and the Louisiana properties, were acquired prior to July 24th by Tex-Penn for cash aggregating some $63,223.29.

Now, the stipulation of which your Honor is speaking covers the value of the five classes of property. Two of those classes, the additional Texas properties and the Louisiana properties, were acquired prior to July 24, 1919, from time to time for cash at the figure I mentioned. The other three were acquired on July 24, 1919, exchanged for 66,000-odd shares of Tex-Penn stock, and it is our contention, your Honor, that the cost or basis to Tex-Penn of those three classes of properties acquired on July 24, 1919, was that which the Tex-Penn Oil Company gave for them, namely, the fair market value of the 66,880 shares of stock.

The Presiding Member: What you are trying to bring out is that the 66,000 shares of stock were issued for property worth something less than $221,000?

Mr. Angell: That is correct, but the value of the property received by Tex-Penn does not constitute the basis of the properties to Tex-Penn. We have not a case here in 1919 where the properties turned over were turned over for all of the stock of Tex-Penn. There were some 13,000 shares, or the difference between 66,880 and 80,000 shares that were issued for properties already in Tex-Penn, so that under circumstances of that character I think it is

clear law that the cost basis to Tex-Penn of these additional properties acquired July 24, 1919, was the fair market value of the Tex-Penn stock issued for such properties.

You have a different situation in 1918, where a two-eighths interest turned over was turned over and the company issued stock. The rule is identical, namely, the basis or the fair market value of the 4,000 shares, but in determining the figure it is necessary to look at the market value of that property.

That is not the case in 1919 where the Tex-Penn already had property and already had stock outstanding.

The Presiding Member: Of course, accepting that premise where does that lead you? You start out with the fact that the Commissioner has determined a figure.

Mr. Angell: I beg your Honor's pardon?

The Presiding Member: When this case was initiated the Commissioner determined a certain profit.

Mr. Angell: Yes, and issued a deficiency notice.

The Presiding Member: Yes, and this problem you are mentioning now is one that inquiry was made about from time to time and which you have discussed to some extent in communications. What you should do is to help us to the figure that should be reached.

Mr. Angell: I do not see, your Honor, as a part of our case, looking at the case from our eyes and not through yours, that the basis is material if we maintain that the transaction is non-taxable, which would, of course, eliminate any question of basis or cost, but your inquiry is pertinent and leads me directly up to the second phase of our discussion, namely, our objections and our own counter-computation.

Our first objection in the Tex-Penn case is this:

"In arriving at the cost or basis of the petitioner's assets, the respondent has failed to include the cost to the petitioner of the 2/8ths interest in the Duke-Knoles properties assigned to it on October 31, 1918, in exchange for 4,000

shares of the petitioner's stock, which cost is fixed by the fair market value of such 4,000 shares," the figure in turn being fixed by the fair market value of the two-eighths interest. That is our first objection. The Government has used $100,000 in respect to the cost or basis on that stock.

The Presiding Member: Wait a minute. Let us take that up. What is the figure you say you want to take?

Mr. Angell: There is no figure now, but in our counter-computation as you will note on page 1 of the statement under the heading leaseholds we have been compelled, as we read your findings and opinion, to take the position that in looking at the matter from your standpoint that the basis of the leasehold is neither proven nor found by the Board. I realize it will seem captious in your eyes, your Honor, but we have tried to approach this question honestly and straightforwardly, and we can find nothing in your findings nor in your opinion which will justify or permit an assignment of the proper basis to these leaseholds.

My second point is:

"In arriving at the cost or basis of the Tex-Penn assets, the respondent has failed to include the cost of the Sutton-Oldham and South American properties acquired on July 24, 1919, in exchange for 66,880 shares of the petitioner's stock, which cost is fixed by the fair market value of such 66,880 shares."

If you again turn to our counter-computation, you will see that the basis for the leaseholds we have again left blank.

We believe it is not in the record because the underlying values to determine the basis or cost are neither proven nor found, and I might add it is not in the record.

The Presiding Member: I believe that you assigned as the error the basis determined by the Commissioner?

Mr. Angell: Yes, your Honor.

The Presiding Member: Now, you say we have not made a finding. Now, can you point to evidence in the record whereby that finding could have been made?

Mr. Angell: The finding on this 66,880 shares of stock?

The Presiding Member: No, a finding first on the 4,000 shares.

Mr. Angell: No, your Honor, there is no evidence in the record.

The Presiding Member: Where does that leave you, then?

Mr. Angell: I think it leaves us, so far as the computation is concerned, in the position where we are wholly unable to make a computation except in so far as the computation set forth in our counter-computation shows a deficiency of some $12,637, which eliminates the Transcontinental transaction entirely.

The Presiding Member: I am not certain that I understand you. You allege error. You say you offer no evidence on the error. Therefore, we can't compute the tax: is that the way you argue it?

Mr. Angell: On the present state of the record, I think we no longer have the burden of establishing the cost or basis. That burden has passed to the Government by virture of the state of the record, at the present time.

Member Van Fossan: On whom was that burden originally?

Mr. Angell: When we originally entered appeal from the 60-day letter, it rested on us, but based on the facts adduced in the trial and the disclaimers of accuracy in the 60-day letters in respect to the two individuals made by Mr. Fullerton, I think the burden has passed to the Government.

Member Van Fossan: They were not changes in the theory of the deficiency notice but merely changes of amount?

Mr. Angell: I did not expect to go into that, but I can very well do so, your Honor.

The Presiding Member: Let us stay now with the Tex-Penn case.

Mr. Angell: Yes. I have before me the printed transcript of the testimony which we will use for appeal, and on which we have agreed. This is taken verbatim from the transcript of the testimony of the trial. Your Honor inquired:

"May I ask a question before we get started. What was the basis used by the Commissioner in determining the gain in this case?

"Mr. Fullerton: You mean the income for the Tex-Penn, for instance?

"The Presiding Member: Yes, sir.

"Mr. Fullerton: In the case of the Tex-Penn Oil Company the Commissioner used the book value as the basis."

Now, turning to the Commissioner's 60-day letter in the Tex-Penn case, we find only one statement in respect to the basis of assets and that is as follows:

"The book value of assets of Tex-Penn Oil Company transferred, $337,205.69."

Bearing in mind the condition of the 60-day letter we turn back to Mr. Fullerton's explanation of that item:

"It consisted of about $55,000 odd, which was the cost of the first well, plus $228,000, which was the amount obtained by the Tex-Penn Company by the sale of stock to the five associates and which was spent on the development of property prior to the transfer of the assets to the Trans-continental. Then there was some two or three smaller items that brought the total up to $337,000."

That is the Government's statement of the correct method of reaching the figures appearing in the Commissioner's 60-day letters.

That is the Government's statement of the character and method of reaching the figure appearing in the Government's 60-day notice.

I submit, in view of the facts of record, and, if you will, of the Government's computation which must be taken to reflect the Board's finding and opinion in respect to basis, there is an absolute repudiation and departure from that $327,000 figure and its accuracy.

Now, on the present testimony and findings and opinion that is fundamentally erroneous. Mr. Fullerton's statement shows that, but the best proof of his consideration being erroneous, in view of your Honors' findings and opinion, is the fact that it now reaches a basis of $1,188,364.76, and includes such additional items as a basis as compared with the 60-day letter as inventory, warehouse supplies, $158,000; well farm investment, $663,000; organization expenses, $11,000, and as I say, about $384,000 in respect to the leaseholds. In his new basis in respect to the leaseholds alone, he is in excess of the figure which the Commissioner set forth in his 60-day notice.

We maintain, your Honor, that that completely disproves and destroys the prima facie value or correctness of the 60-day letter figure, and it having been destroyed it is fairly clear that the burden rests upon the Government to establish a correct figure.

The Presiding Member: You do not seriously argue that?

Mr. Angell: Yes, your Honor, I do seriously argue that.

The Presiding Member: I know, but as I understand this matter it was repeatedly brought up in the trial of this case and your position, as I recollect the testimony, was that the Duke-Knoles leases were a burden and that there was little value to them. Isn't that correct?

Mr. Angell: Isn't it very much, your Honor, the same as that line of cases where the taxpayer is endeavoring to

contest the deficiency notice asserting again on the sale of a property acquired prior to March 1, 1913? As I recall it, the burden is on the taxpayers, just so long as the Government's 60-day letter stands unrepudiated, to prove not only the cost, which is a very ready matter by reference to his books, but to prove the March 1, 1913, value, and unless he proves both of those factors in the computation of income his case fails, and I think in one case, the Houston case before the Third Circuit, it failed even in spite of the fact that the taxpayer could not prove the March 1, 1913, value because he had not the necessary proof.

The Presiding Member: That accepted the prima facie correctness of the Commissioner's determination.

Mr. Angell: It did, but now where the prima facie correctness has been destroyed either by the repudiation of the 60-day letter basis or by facts so obviously in conflict with the 60-day letter basis, then the burden passes to the Government, which is quite fair and quite equitable. You may feel that I am in error in my position.

Member Van Fossan: Were not those changes which were made by the Commissioner in his determination all in favor of the taxpayer?

Mr. Angell: I do not think that makes any difference, frankly, your Honor.

Member Van Fossan: That is a fact, though, isn't it?

Mr. Angell: Yes, his basis to-day as suggested, is $1,100,000 as compared with $337,000.

Member Van Fossan: And the burden of proof is merely a rule of procedure.

Mr. Angell: I am not so sure about that. I am inclined to think under the Taylor case in the Supreme Court the burden is the ultimate burden, but certainly it is the burden of introducing some proof.

The Presiding Member: What did the Supreme Court say in the Taylor case? In the final analysis, didn't the Court say opportunity should be given to the taxpayer?

Mr. Angell: No, not in the Taylor case.

The Presiding Member: I have not read that for quite a while.

Mr. Angell: No, your Honor, in the Taylor case the Court said this:

"Then upon appropriate application that further hearing be had, it should have heard evidence to show whether a fair apportionment might be made, and if so, the correct amount of tax."

It did not say who was to make application, and it did not say who was to produce the evidence. Our position is, in view of the position in this case, that the Court said in the course of the decision that the decision or obligation rests upon the Government.

I realize, in view of the magnitude of the Transcontinental transaction and the general tenor of the Board's opinion, that there was an intention to determine a sizeable amount of tax, but I am honest when I say to you gentlemen that when you approach the question from the standpoint of Rule 50 we are unable to compute the tax in view of the findings and opinion or on going back to the record.

The Presiding Member: Let me ask you this: Have we made all the findings that we are warranted in making on the record as it stands, in so far as it goes to the basis here?

Mr. Angell: Yes, I think with the possible exception of additional Texas and Louisiana properties which the reference to the record, page 471, indicates was $63,223.29 in cash.

There is no finding on that, but that is a very minor and inconsequential feature.

The Presiding Member: Have you analyzed that figure as shown in the computation by the Commissioner to determine whether what he proposes to allow has included this $63,000?

Mr. Angell: I do not know whether he has or not. I should think he has.

The Presiding Member: I suppose that item appeared under leases, that is, in the accounts of Tex-Penn?

Mr. Angell: Yes, I should think he has included it, because he takes that figure of $1,835,000 right from the Tex-Penn balance sheet, and then he makes that adjustment in it, and that balance sheet figure undoubtedly would include the $63,000 odd, although I cannot vouch for that.

Mr. Fullerton: That is in Exhibit 32.

Mr. Angell: Mr. Fullerton says in Exhibit No. 32, which, as I recall it was the analysis of the leasehold figure. It does show the figure $63,000.

Mr. Fullerton: Exhibit 32 is the analysis of the $1,835,000 odd.

The Presiding Member: That includes this $63,000 odd, I think.

Mr. Fullerton: Yes, and the $100,000 on the Duke-Knoles leases.

The Presiding Member: The thought I had in mind is that even though we may not have definitely found this item of $63,000, the Commissioner does propose in this computation to give you the benefit of it.

Mr. Angell: Yes, I think it is in the Board's findings, because you find the balance sheet figure of $1,800,000, and you found the two-eighths interest in 1918 was $100,000, which, of course, eliminates that problem. I do not think that $63,000 is in the findings. It is in the record.

Mr. Fullerton: It is in the balance sheet.

Mr. Angell: It is in the balance sheet, but there is no way of identifying it in the balance sheet.

The Presiding Member: I take it that no request for findings was made, as to that particular item.

Mr. Angell: We made no request for findings of basis at all, as I recollect, on the theory that this was a non-taxable transaction.

Passing to the third objection, which I have already covered, this is the method which the Government has employed in reaching the basis for the leaseholds: Starting with the balance sheet figure and then making offsets predicated upon the par value of the stock, less the stipulated value, not only of the three properties then acquired, but of the two others, a finding which had absolutely nothing to do with the cost of such property, or the cost of the 66,800 shares of stock.

Finally, your Honors, and here again we have endeavored honestly to approach the problem presented to us under Rule 50, we believe that the Government's computation is deficient in respect of its failure to include what we believe to be what the Board intended to include, namely, additional cash as part of the Transcontinental-Tex-Penn transaction. Let me read the way we have our objection framed:

"In fixing the aggregate amount of consideration received by Tex-Penn on the transfer of its assets, the respondent has failed to include 'some part' of the cash which the Board in its findings and opinion seems to have held passed to the five individuals on account of the surrender of their Tex-Penn stock."

Let me recall part of your Honors' opinion. You first consider whether the transaction between Tex-Penn and the Transcontinental was a taxable or non-taxable transaction within the Act and the regulations. You found as a matter of fact that the $350,000 item which we had main-

tained was carved out of the $9,000,000 and went to Tex-Penn by voluntary action, did not so go, but passed from the Transcontinental into the Tex-Penn's part of the consideration. Therefore you concluded the transaction was not within the Act or the regulations, and having made that conclusion you continued on on page 44, and I find I am a little uncertain as to what your Honors did mean, but there is sufficient likelihood for your meaning what we think you meant for us to raise this objection. The opinion states:

"Our conclusion that the transaction is not within the non-recognition provisions need not rest solely on our finding that the $350,000 was part of the consideration for Tex-Penn assets. It may with reason be held that Tex-Penn stockholders received cash for their stock," meaning Tex-Penn stock.

Then you refer to Article 1567 of Regulation 45, and recite:

"It is not only necessary that Tex-Penn receive as a consideration only stock or securities, but it is also necessary that the stockholders receive only stock or securities for their Tex-Penn stock. If the stockholders receive other than stock or securities, the transaction is taxable, regardless of whether any cash passed to Tex-Penn."

Then you continue:

"When negotiations were pending with the bankers for the purpose of arranging to finance the proposed Transcontinental Company, Wrather, Lantz, Kirkland and Parriott, under date of June 2, 1919, authorized and directed Benedum to sell the entire holdings of Tex-Penn and their individual interests in the leases for $12,000,000," and you recite that "thereafter they executed together with Tex-Penn a joint conveyance of the entire 7/8ths interest in the property, which instrument was placed in escrow and was later delivered to Transcontinental, and thereby

became the means of transferring and conveying to that company all interests in the Duke-Knoles leases. Although changes were made from time to time as Benedum negotiated with the bankers and Transcontinental, and he was required to forego $3,000,000 of his share in cash (apparently to be compensated for in stock), the other individuals, and particularly Wrather, Lantz and Kirkland, persisted in their demand for their proportionate part of the sum as originally fixed." That was the $5,250,000.

"It is true the shares of Tex Penn went to Benedum and Parriott and the reserved interests to Transcontinental, but we think it must be conceded that the sum received, particularly by Wrather, Lantz and Kirkland, covered all their interest in the Duke-Knoles leases and Tex-Penn stock. It cannot be seriously urged that the $30.00 paid for the stock served to compensate them for their interest in Tex-Penn; some part of the cash from Transcontinental included payment for those shares. This was the original agreement; that amount less the $350,000 was entered on the Parriott, Attorney, accounts as consideration for both the stock and lease interests and the receipts given for the cash acknowledged that it was in payment for both. Wrather, Lantz and Kirkland did not consider that they were completely and irrevocably out as stockholders upon the assignment of their stock, but, on the contrary, in the event the full consideration was not paid they would resume their positions as stockholders, and they so stipulated when they assigned their interests to Parriott."

Now, a finding has also been made as follows, finding No. 113 on page 35:

"The cash received by Wrather, Lantz and Kirkland from Transcontinental was consideration for both their stock in Tex-Penn and their interests in the Duke-Knoles leases."

If some part of that cash which came from Transcontinental went to the five individuals as part consideration for their Tex-Penn stock, the only way that cash could get, as we see it, to the five individuals, is by way of Tex-Penn because Transcontinental did not acquire Tex-Penn stock. Tex-Penn stock was surrendered to Tex-Penn on liquidation, and as we analyze it, and as I say we are not sure what your Honors mean, some part of that $350,000 and some part of the $1,850,000, in your Honors' opinion, as we interpret it, apparently went through Tex-Penn down to these five individuals. Of course, your Honors have made no findings as to how much.

The Presiding Member: Who did the Tex-Penn stock go to?

Mr. Angell: To the Tex-Penn Oil Company.

The Presiding Member: Not finally.

Mr. Angell: The five individuals started off each owning his proportionate share of the stock, and then the three of them sold to Benedum and Parriott their Tex-Penn stock, and that left Benedum and Parriott the sole stockholders of Tex-Penn. That situation remained until it was liquidated.

The Presiding Member: That transaction whereby Wrather, Lantz and Kirkland turned over their stock to Benedum and Parriott was a thirty dollar transaction.

Mr. Angell: Yes.

The Presiding Member: And that part of the opinion rather indicates that some of this $5,000,000 could well be said to be compensation of or in payment for their interest in the Tex-Penn.

Mr. Angell: Yes.

The Presiding Member: That would indicate probably that the money came the other way around, wouldn't it?

Mr. Angell: You mean not by way of Tex-Penn but direct to the five. We interpret your Honors' opinion as

holding that part of that $8,650,000 did come around by Tex-Penn, so that came to the five individuals in consideration of the Tex-Penn stock. If that is the intention of your Honors, then, of course, whatever did come around that way must have increased the cash passing between Transcontinental and Tex-Penn to increase the cash almost right down the line on distribution, and that amount has not been found.

We feel in duty bound to point this out to you, although we may have been mistaken in what we had in mind.

The Presiding Member: Your point is, and I do not get it yet, that the amount received by Tex-Penn from Transcontinental should be increased so that the profit should be greater than now determined by the Commissioner?

Mr. Angell: That is not my own opinion, but I am trying to look at it through your eyes and that seemed to be the effect of your comment in the opinion.

The Presiding Member: Just to follow through on that suggestion for a minute. Your suggestion is that the Commissioner is not getting as much tax as you think under the opinion your client should pay?

Mr. Angell: That is correct, your Honor. After all, we owe some duty to the Board. The Board is charged under the statute with fixing the deficiency regardless of what the Government may say. It is your Honors' duty to do that. It is our duty to help you find what we believe to be is the deficiency as you have so found.

The Presiding Member: I understand that, but you are doing this out of a high sense of duty, not because your client is affected by the situation as it exists?

Mr. Angell: No, quite obviously.

Finally, in our objections to the Government's computation we made two objections in respect to the computation of invested capital which had already been raised in

respect to income, namely, the failure to give the proper cost to the petitioner of the two-eighths interest in the Duke-Knoles properties assigned to it on October 31, 1918, in exchange for the 4,000 shares of the petitioner's stock, and failure to use the proper cost to the petitioner of the Sutton-Oldham and South American properties acquired on July 24, 1919, in exchange for 66,880 shares of petitioner's stock. These objections go to the petitioner's invested capital.

In conclusion we make two formal objections:

"The respondent has erroneously computed the petitioner's adjusted net income at $6,281,568.18, whereas such net income did not exceed $65,114.94.

"The respondent has erroneously computed the deficiency in petitioner's income and excess profits taxes at $2,871,085.48, whereas such deficiency did not exceed $12,637.64."

In our counter-computation which we have filed we have endeavored, as I say, to set up the deficiency in accordance with our understanding of the Board's opinion and the findings made, indicating the places where we cannot insert a figure because of the failure of such a figure to be proven or found, and of course, not being able to determine the basis for the Tex-Penn assets, it is impossible to determine the taxable gain.

Now, if I may turn to the two individuals for a moment I think we can clear those up much more briefly.

The Presiding Member: Yes, but I would like to get your position a little bit clearer, Mr. Angell. If I understand your contention it is that the computation submitted by the Government allows you a cost of $100,000 for the Duke-Knoles leasehold. That is correct, isn't it?

Mr. Angell: Yes, sir, that is correct.

The Presiding Member: Is it your position that the figure should be in excess of that amount?

Mr. Angell: Yes, your Honor, but it would be pure guess-work for me to undertake to estimate the figure because we have not the figure that is based on the fair market value of the two-eighths interest, and there is no testimony in the record as to that value.

The Presiding Member: You think it should be in excess of that?

Mr. Angell: It is very difficult for me to say. I do not want to testify and I am not competent to testify as to the fair market value of the two-eighths interest. I should say that if evidence were adduced the evidence would show the value would be higher than $100,000. On the other hand, it might be lower. I cannot tell, but I think it would be higher. That was about the time, or shortly after the first well had come in when things were booming down in that part of the country, and perhaps our interests down there were more valuable than they were about a year later when the development had proceeded far enough to indicate that that field was a flop.

The Presiding Member: Well, don't you think if that was so that you should have put in some evidence on it at the time?

Mr. Angell: I think that we felt on our basis of the case that the basis was wholly immaterial. Certainly if the figures in the case of leaseholds and well farm investment and warehouse supplies are so grossly in excess of the sixty-day letter figure and the testimony showed that any computation of basis would vary so sharply from the sixty-day letter figure we felt it was no longer our burden.

Member Van Fossan: If you elected one theory of proof and that theory of proof was not adopted, or was not approved in the decision, and the record fails to reveal there sufficient facts to give you the relief that you think you should have, how can you shift that burden to the other party? Why wasn't it your duty to put an anchor to windward?

Mr. Angell: That is a nice question of judgment, your Honor. As the proof developed we felt that as a matter of law the burden no longer rested upon us.

The Presiding Member: That was before the Taylor decision?

Mr. Angell: Yes, that was before the Taylor decision. I guessed right, your Honor, for once in my life. These gentlemen point out to us that we had a point in our brief which your Honor did not consider in which we advanced this identical point which I am now arguing, although that was filed before the Taylor decision came out.

Turning now to the individual cases I can cover the matter by taking up the Benedum case, because the Parriott case presents the same problems and only the figures vary. Let us see what that problem is so far as basis is concerned, because our question here is the same as to basis or, rather, lack of basis.

Mr. Benedum on the liquidation of the Tex-Penn Oil Company relinquished his Tex-Penn Oil Company stock and in exchange he received certain assets. Therefore it becomes necessary to determine the cost or basis to Mr. Benedum of the Tex-Penn stock so relinquished. He received blocks of stock on four different occasions, or, at least, the stock he received may be classified in four different groups.

On the organization of the Tex-Penn on October 31, 1918, he received 1500 shares of the 4,000 shares issued at that time. We believe that the basis to Mr. Benedum of those 1500 shares was the value of the 1500 shares on that date when such shares were issued to him, which value in turn depends upon the value of the two-eighths interest acquired by Tex-Penn in the Duke-Knoles property. That value, however, is not found.

The Presiding Member: That is not proven?

Mr. Angell: It is neither proven or found.

Secondly, from time to time, as you recall, Mr. Benedum and the other four individuals purchased for cash addi-

tional stock of the Tex-Penn Oil Company as found in Finding No. 15 on page 6 of the report. In this fashion Mr. Benedum acquired his second block of stock, namely, 3,420 shares, for which he paid in cash $85,500, obviously the cost basis of that block of stock.

Third, on July 12, 1919, Mr. Benedum acquired some 3,420 shares out of the Wrather, Lantz and Kirkland holdings, representing his shares of that stock, for which he paid $15. That, I take it, is the cost or basis for that block of stock.

Finally, on July 24, 1919, Mr. Benedum acquired, roughly, 44,580 shares which represented his interest in the 66,880 shares issued by the Tex-Penn on that date for the South American, Oldham and Sutton County properties. The basis we believe of this 44,580 shares so coming to Mr. Benedum is the fair market value of those shares on the date of issue for the reason I have already argued. That value has not been proved, not found, and does not appear in the testimony.

The Presiding Member: Would not the fair market value for the stock govern?

Mr. Angell: I think that would, your Honor. In view of that, let me turn to the Government computation of basis. The Government shows an aggregate basis to Mr. Benedum with respect to his Tex-Penn stock of $198,015, made up as follows:

Cash paid for the stock, that is, six-sixteenths of $328,000, or $123,000. You will note that they add to the $228,000 which was the cash paid from time to time for additional stock, $100,000 which they interpret to be the basis or cost of the 1500 shares acquired by him on the organization of the Tex-Penn. Then there is the item of $15 paid to Wrather, Lantz and Kirkland for his share of their stock.

The final item shows what they characterize as the cost or basis of the South American and West Texas oil lands.

I assume by West Texas you mean Sutton and Oldham Counties?

Mr. Fullerton: Presumably.

Mr. Angell: They show three-fourths of $100,000 in that item. We believe that the use of the $100,000 figure in respect of the original block acquired October 31, 1918, is erroneous for the reasons I have outlined. We believe that there has been no basis laid in respect of Mr. Benedum's share of the 66,880 shares, a figure which is neither found nor proved in the testimony. We acquiesce in the $15, the cost of the stock purchased from the three others.

In respect of the South American and West Texas oil lands there is no finding of the Board with respect to the cost or value of such properties, although it appears from one of the exhibits that the two paid $100,000 for the South American option, and we think it is erroneous to include the West Texas oil lands in the figure because, of course, that is an entirely different class of property.

The Presiding Member: In connection with the 66,000 shares would not Mr. Benedum have received income in receiving those shares which he should have reported if they had a fair market value in excess of the cost?

Mr. Angell: If it were in excess of his cost I should think so, your Honor.

The Presiding Member: Well, does he show that in his return or wouldn't it be a stand-off even as far as that part appears?

Mr. Angell: Practically—probably so.

The Presiding Member: You say probably so?

Mr. Angell: Practically is what I said, but probably would be as good a word to use, your Honor. There would be a set-off there.

The Presiding Member: Then there is no injury.

Mr. Angell: We cannot tell, your Honor. It depends entirely upon the fair market value of the 66,880 shares when compared with their cost.

The Presiding Member: 1919 seems to be a checking-up period on it, when this is realized in one way or the other. Now, if he realized it when he got it from Tex-Penn so that he gets a higher basis in the later transaction that is one thing.

Mr. Angell: That is true, your Honor, and again trying to look through your eyes and interpreting your decision we must find a basis of the 66,880 shares of stock, and that is the fair market value, a figure which is not found and which is not in the record. That prior transaction is not before the Board.

The Presiding Member: I know, but Mr. Benedum's income for this current year is before the Board and this transaction occurred in 1919.

Mr. Angell: That is correct.

The Presiding Member: I do not see how you can argue quite in this manner. As I understand the thought in the Taylor case there is a showing of some hardship. I cannot get so far from your situation where there is the slightest indication of a hardship.

Mr. Angell: I may be wrong, your Honor, but I am endeavoring to present our position to you right or wrong. The transaction whereby these two individuals acquired this 66,880 shares was a transaction which involved, or might involve the income of the two for 1919, but that question is not at issue in this case. As I say, I simply want to present this matter to you.

Aside from the matter of basis in the individual case of Mr. Benedum I have covered the first two points with respect to the 1500 shares received on organization and the entire lack of basis on the 66,880 shares received July 24, 1919.

Finally, our third objection is in arriving at profits on sales, the figure shown on the Government's computation in Schedule 1, directly below "unallowable deductions" and additional income, the figure being $4,628,280.38, the

respondent has failed to segregate the consideration received upon the surrender of the petitioner's Tex-Penn stock in liquidation from the aggregate consideration received for the petitioner's Tax-Penn stock and for the petitioner's share of the individually owned five-eighths interest in the Duke-Knoles leases. You will note on the Government's computation under the heading, "Explanation of items changed" profits on sales increased, there is "selling price of 6/16 of 5/8 of production from Duke-Knoles pool and your share of Tex-Penn Oil Company stock" and below that an item covering "received:

"Cash, $1,368,750," which represents Benedum's share of the $8,650,000 cash, and the second item, Transcontinental Oil Company stock, 683,037.125 shares at $7—$4,781,259.88.

In the first place, it is erroneous, it seems to us, to characterize the delivery of the Tex-Penn as a sale. It was not a sale. It was a transfer or liquidation, and in the second place the Government groups together two separate and definite transactions, namely, the sale of six-sixteenths of five-eighths reserve interest which passed direct to Transcontinental for the $1,368,750, or as we believe applies to his share of the $350,000 and the Tex-Penn stock which did not go to Transcontinental but which went to Tex-Penn on liquidation.

The Presiding Member: Does that make any difference?

Mr. Angell: I am not good enough of an accountant to know, your Honor, and I have only looked at this from the standpoint of theory. I think in theory the computation is wrong. Whether or not it makes any difference I am not prepared to say. Is there anybody here who can comment on that?

Then, finally, the two formal objections:

"The respondent has erroneously computed the petitioner's adjusted net income at $4,198,629.97, whereas such net income did not exceed $1,561,199.55.

"The respondent has erroneously computed the deficiency in petitioner's income and surtaxes at $1,925,466.95, whereas such deficiency did not exceed $36,760.63."

(Thereupon a short recess was taken after which the following occurred:)

Mr. Angell: If your Honor please, during the recess I had an opportunity to read the motion which my friend Mr. Fullterton has filed, and without going into the matter I should like to ask an exception in the event the Board should grant the motion.

The Presiding Member: We will take that up later. I did not know whether that had been served on you. I doubt whether it properly comes up under a Rule 50 settlement.

Mr. Angell: Then I will set forth my grounds of objection at that time.

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STATEMENT ON BEHALF OF THE RESPONDENT.

Mr. Fullerton: In these cases we have a very peculiar situation in the computation in all of the three cases. In each one of the three cases we have large items of receipts and the disposition of assets and no basis is shown on the computation. That is the petitioners' computation of which I speak.

Mr. Angell: You are speaking of the Tex-Penn?

Mr. Fullerton: All three of them. For that reason the petitioners show no income whatsoever in regard to that particular disposition of assets, although they admit that probably the basis which the Commissioner has allowed is in excess of what they would be entitled to. They do not admit that is so, but probably that is so.

Now, taking up the first matter, of the acquisition by the Tex-Penn Oil Company of the two-eighths interest in

the Duke-Knoles leases on October 31, 1918, the petitioner's contention is that was an exchange of stock for leases, and that the cost to the Tex-Penn Oil Company is the fair market value of the stock so exchanged.

As the respondent sees that proposition it was not an exchange of leases. It was a purchase by the Tex-Penn Oil Company of certain leases for cash, if anything, $100,000 in cash. The evidence shows, if the Board will recall, that Mr. Benedum gave to Mr. Parriott his check for $100,000. Mr. Parriott, as attorney for the five individuals, subscribed to the Tex-Penn Oil Company for 4,000 shares of the stock of that company and gave his check, as attorney, for the 4,000 shares which were delivered to him. Then, Mr. Parriott as an officer of the Tex-Penn Oil Company made out a check, the Tex-Penn Oil Company check, to Parriott's attorney for $100,000 to purchase, and did purchase certain leases which are known as the Duke-Knoles leases.

Now, under the decisions of the Board the respondent thinks that was the purchase of those leases for cash, and I cite the following decisions:

Mrs. C. B. Staton v. Commissioner of Internal Revenue, 1 B. T. A. 1222;

W. J. Hunt v. Commissioner of Internal Revenue, 5 B. T. A. 356;

Geo. Theis, Jr., 3 B. T. A. 1030; and

Edward Langenbach v. Commissioner of Internal Revenue, 2 B. T. A. 777.

Now, this $100,000 is included in the $1,835,000-odd which shows on the Tex-Penn balance sheet as of July 31, 1919, which is Finding No. 79 by the Board.

Now, Petitioner's Exhibit No. 32 is the break-down by the petitioner's witness of this $1,835,000-odd, and shows that it includes $100,000 paid by the Tex-Penn Company for the two-eighths interest in the Duke-Knoles leases, and also it includes this $63,000 which Tex-Penn used to pur-

chase miscellaneous leases. In regard to the two-eighths interest in the Duke-Knoles leases the respondent has given to the petitioner the basis of $100,000, and has given to each of the individual petitioners, Benedum and Parriott, for their 1500 shares of stock of the Tex-Penn a basis of $100,000. Now, the petitioner contends that this is not right, but that we should take the fair market value of the leases to the individuals as the basis and the fair market value of the stock exchanged for the leases as the basis for the Tex-Penn Oil Company, but the respondent does not see it that way.

Now, even though it were an exchange, as the petitioner contends, no gain on that exchange could be recognized because the stock of the Tex-Penn did not have any fair market value on October 31, 1931.

Member Van Fossan: Are you accurate in that date?

Mr. Fullerton: It is 1918, as I remember the date.

Member Van Fossan: You said October 31, 1931.

Mr. Fullerton: I beg your Honor's pardon. Referring to Article 1566 of Regulations 45, the 1921 edition, it says:

"Where property is transferred to a corporation in exchange for its stock, the exchange constitutes a closed transaction and the former owner of the property realizes a gain or loss if the stock has a market value and such fair market value is greater or less than the cost or the fair market value as of March 1, 1913 (if acquired prior thereto), than the property given in exchange."

In other words, when the Tex-Penn Oil Company exchanged stock for those leases, admitting for the purpose of the argument only that that was an exchange, the transaction was a closed transaction only if the stock of the Tex-Penn Oil Company had a fair market value.

Again referring to Article 1564 of the same regulations, we find this:

"The amount of income derived in case of an exchange of property, as of stock for a bond, is the excess of the

fair market of the value at the time of the exchange of the bond received in exchange over the original cost of the stock exchanged for it, or over the fair market price or value of such stock as of March 1, 1913, if acquired before that date."

This is held by Treasury decision 3206 that where a bond is changed to real property the amount of income derived from the subsequent sale of the bond, which also by the amendment is changed to property for cash, is the excess of the amount so received over the fair market value of such bond where acquired in exchange for the stock. On the other hand, if the property received in exchange is substantially the same property or has no fair market value no gain or loss is realized upon the sale of the new property and the amount of income derived is the excess of the amount so received over the cost or fair market value as of March 1, 1913, of the old.

My premise is that if the Tex-Penn Oil Company stock had no fair market value at the time of the acquisition, which the petitioner calls an exchange, then there could not be a closed transaction. There could not be a recognition of gain and the basis in the hands of the Tex-Penn Oil Company would be the cost of that two-eighths interest to the five individuals. When we look into that we find that the cost was practically nothing, because the leases, as the record shows, were acquired merely for the payment of rentals, and the cost of the first well was only about $55,000, and two-eighths of that cost would be merly a nominal cost in this case, but when we look at the situation of the Tex-Penn stock to ascertain whether or not it had a fair market value we find that this was the case: the stock was closely held by five individuals only and they had reserved from the leases a five-eighths overriding royalty out of which they gave to the Tex-Penn Company only two-eighths of the total production, and that two-eighths of the total production was a burden with all of the expenses of drilling and operating, and also because

of the fact that the Tex-Penn Company was pledged and obligated by the assignment to do the drilling and operating.

In the case of Bourne v. McLaughlin it was closely held, that is, the stock, and there was no market. It was stated there that under those circumstances the stock had no fair market value.

We do not believe that under those circumstances anyone would have purchased the stock.

Now, when we get to the intrinsic value of the stock, about the only thing upon which fair market value depends is the expectation of future earnings. We find that in the evidence in this case, in the opinions of experts for the Commissioner as well as those of the petitioner, that the Tex-Penn could never make a profit, and the witness Wrather testified that the Tex-Penn stock was more of a liability than an asset in his eyes.

I have made some computations from the record. The petitioner's return for 1919 estimated as of the discovery date value, which was just twenty-nine days before this exchange occurred, that they would have to drill 300 wells and there would be an aggregate ultimate production of some 24,000,000 barrels. The findings show that the price that had existed for oil was $2 a barrel. The findings also show that the estimated operating expense was 25 cents a barrel. Now, that leaves 25 cents a barrel for drilling. If they had to drill 300 wells at a cost of $37,500 per well, which the findings show was the estimated cost, the cost per barrel on 300 wells at $37,500 per well, with an aggregate production of 24,353,000 barrels, would be 42 cents per barrel. So that, the drilling cost of the petitioner showed a great deal in excess of two-eighths of the total production.

Now, I have taken a more conservative computation which is Mr. Matson's computation. He accepted the petitioner's estimate of $37,500 as the cost per well. That is,

after reducing it for the possible salaries, and he only figured that it would be necessary to drill 125 wells instead of 300 wells, but he estimated the ultimate production at 18,556,562 barrels, or a cost per barrel for drilling of twenty-five and a quarter cents, which also is in excess, if you add operating cost, of two-eighths of the $2 per barrel which was the price to be expected.

Then, I made still another computation, and in that I took the most liberal figures from the petitioner's viewpoint that I could find. I have taken $37,500 which all accepted as the estimated cost per well. Then I have taken the lowest number of wells, which is 125 wells, and then I have taken the highest figure for the initial production, and these highest figures come from Petitioner's Exhibits 30 and 74. I took these for the seven wells that were within the confines of the Duke-Knoles leases and I found that they would give me an average initial production of 1595 barrels, and then taking the estimate of 70 barrels of production for each barrel of initial I multiplied 1595 by 70 which gave me 111,650 barrels production per well. Then multiplying that figure by 125, the number of wells, that gives me an ultimate production for those wells of 13,956,250 barrels and a drilling cost of 33½ cents per barrel.

If we take the 125 wells and the figure that appears in the findings and which the petitioners' witnesses put forward, that is, that 70 barrels of ultimate production could be expected from each well for each barrel of initial, if we take 125 wells we get a figure of 46 cents for the drilling cost per barrel.

Under these circumstances the respondent believes that it was known at the time the exchange occurred, October 31, 1918, that the Tex-Penn Oil Company stock had no fair market value, and the individuals who had to do with the transaction realized it at the time, and knowing that the Tex-Penn Oil Company would run into a deficit they

set aside one-half of the five-eighths overriding royalty to meet that deficit, and at the end of eight months of operation they had a deficit of $600,000. From the fund that was set aside the record shows that they used $242,000, and in addition to that they used the $350,000 that they received from the Transcontinental Oil Company in order to meet their deficit. So that, the respondent feels that this was a cash transaction. As a matter of fact, a witness testified that it was. On page 92 of the transcript of March 8, 1932, Mr. Parriott testified to the consideration as follows:

"Q. And for what consideration did you convey that 2/8ths? A. In consideration of $100,000.

"Q. How paid? A. Paid in cash.

"Q. You are sure; it was paid in stock, was it not? A. My recollection is it was paid in cash."

That was the extent of the evidence at the time.

The Presiding Member: Is that changed in the record?

Mr. Fullerton: You mean by the stipulation which made corrections?

The Presiding Member: Yes, or later on did Mr. Parriott make any different statement?

Mr. Fullerton: I think he did later. He testified to the actual facts, that is, to the receipt of the check from Benedum and payment over to the Tex-Penn Oil Company for stock, and receiving it back for the leases.

The Presiding Member: Does it appear in the record definitely what the petitioner's view was on that point, whether or not it was a cash transaction or whether the properties were paid in for stock?

Mr. Fullerton: Not in so many words, except in this one place. It does show that they set the leases up on the Tex-Penn books at $100,000.

The Presiding Member: No, I did not have that in mind. I have some recollection of inquiring during the conduct of this case as to what was the petitioners' posi-

tion. As near as I can remember there was some statement to the effect that we have not determined yet whether we will accept $100,000 or take some other view. Can you put your hand on any discussion in the record on this point?

Mr. Fullerton: Not except that which I have read to you, no, your Honor.

The Presiding Member: Do you know where it is, Mr. Angell?

Mr. Angell: If I gather your Honor's trend of thought, and again I have before me only the printed transcript of the testimony, and this is on page 333.* Mr. Fullerton set forth our position in respect to this $100,000, you will recall, and this is in response to an inquiry from you:

"You will recall that the five associates purchased 4,000 shares at $25 per share. That is $100,000 cash. They paid for it with a check and then the Tex-Penn Company purchased from the five associates the leases subject to the overriding royalty for $100,000 and paid for it in check. The petitioners contend, as we understand the pleadings, that those two transactions should be disregarded and that it should be considered as an exchange of leases for stock. The respondent has contended that not having reported, because the individuals did not report any profit on the exchange on the alleged exchange of leases for stock in 1918 and the statute of limitations having run as against 1918, the petitioners, Benedum and Parriott, at this time would be estopped from claiming a new basis for the Tex-Penn stock in their hands." Then Mr. Davis intervened and Mr. Fullerton restated his position. (Reading:)

"Member Van Fossan: How do you figure out an estoppel there?

"Mr. Fullerton: The basis other than the $100,000?

"Member Van Fossan: How do you figure an estoppel there?

* The revised page reference is page 1133, *supra*.

"Mr. Fullerton: The theory is that when a taxpayer takes a certain legal position with reference to the case and that that is the proper position, even though the Government is aware of all the facts as the taxpayer is aware of all the facts, the taxpayer cannot after it is too late to adjust the tax of a former year come in and change that position in order to get a lower tax in a later year.

"Member Van Fossan: Has the Government changed its position on reliance of the position of the taxpayer?

"Mr. Fullerton: No; but the Government has relied upon the representations until the Statute of Limitations has run against the year 1918, consequently it has a right to assess the tax that would have been due had the exchange of leases for Tex-Penn stock been reported as profit and taxes assessed in that year.

"The Presiding Member: May I ask, would that estoppel you are speaking of carry through to the Tex-Penn Company so that the corporation would be estopped by the act of some stockholders?

"Mr. Fullerton: The respondent does not so claim.

"The Presiding Member: So that the Tex-Penn Company could get a new basis?

"Mr. Angell: I think perhaps your Honors ought to realize, as I said once before in this hearing and stated at the hearing in March, when these two gentlemen, Messrs. Bendum and Parriott, prepared and filed their return covering the year 1918, the published regulations of the Treasury Department, rightly or wrongly, but nevertheless published regulations of the Treasury Department at that time, treated a transaction of this nature, to wit, the exchange of assets for stock, as a non-taxable transaction. It was not until September of that year when the Treasury Department modified its ruling. Under these circumstances and in face of a modified position of the Department, it is certainly proper to say there can be no

basis for an estoppel; we think, in any event, there can be none; but certainly none here where the taxpayer in making his return followed the regulations then in effect."

The Presiding Member: That does not quite answer what I had in mind.

Mr. Angell: It does not, your Honor?

The Presiding Member: No.

Mr. Angell: I am sorry.

The Presiding Member: I have some recollection from the statement that Mr. Adams was considering that question of whether or not he would stand on the cash.

Mr. Angell: I do not think we ever committed ourselves on that. We simply raised the question in our pleadings.

The Presiding Member: I think that is right.

Mr. Angell: I raised that question in our pleadings. I remember making comments before this excerpt I read on the point. Then as I say, I read from Mr. Fullerton's statement of our position, but we never committed ourselves on the question.

The Presiding Member: What I was trying to put my hand on was the fact that during the course of those proceedings your attention was called to this and you were asked to commit yourselves, and instead of that you rather regarded it as immaterial and did not commit yourselves.

Mr. Angell: That is correct, your Honor, and you will recall in my letter to you of January 20, 1933, which we wrote in response to your inquiry as to our conception of basis we set forth our position with respect to this two-eighth interest quite clearly and fully.

The Presiding Member: All right. I am sorry to interrupt you, Mr. Fullerton. Proceed.

Mr. Fullerton: To proceed to the second point the petitioner makes in regard to the basis in the hands of the Tex-Penn of the Sutton and Oldham County leases and

the South American properties, that the basis is the fair market value of the 66,880 shares of Tex-Penn stock, the respondent is of the opinion that in this case, just as in the transaction which took place October 31, 1918, that it was not a closed transaction and could not be because the Tex-Penn Oil Company stock had no fair market value. The conditions were more adverse to the setting of a fair market value to that stock than they were on October 31, 1918.

The Presiding Member: Did you ask for any finding that this stock had no fair market value?

Mr. Fullerton: Not until I filed my motion yesterday.

The Presiding Member: But you offered no particular testimony to that effect, did you?

Mr. Fullerton: If you use the words "particular testimony," I did not have any expert witnesses to testify as to that point. We did, however, offer all the evidentiary facts which were necessary to make the finding.

The Presiding Member: What I had in mind is this: You are asking something now pretty much on an assumed fact which you did not ask to be found at the time. I do not think your computation is at all dependent upon whether or not this stock had a fair market value or whether it did not.

Mr. Fullerton: No, I do not think it does, but I do think this, that even taking the petitioner's position that those were taxable exchanges, which we do not think—we think they were not taxable exchanges, if we go back to the cost which is known, when there is no closed transaction then our computation gives the petitioner even more than he is entitled to, that there cannot be any possible injury.

On July 24, 1919, when those 66,800 shares were exchanged for the Sutton County and Oldham County leases in the South American properties the company was in very bad shape. They had a deficit at that time of $600,000, and

the stock was very badly tied up with the various agreements. Benedum and Parriott controlled it and would not sell because they wished to use it to get control of Transcontinental. Under those circumstances there was no fair market value given to the stock, it had no market value and under those circumstances we have to go back to the cost of those items to Benedum and Parriott. The record shows clearly that the cost of the South American leases and options to Benedum and Parriott was $100,000 but there is nothing in the record to show the cost to Benedum and Parriott of the Sutton and Oldham County leases.

Mr. Oliver testified in regard to these leases, and you will find it on pages 872 and 873 of the transcript of October 24, 1932, he testified that these were the rankest kind of wild-cat leases, and we know from general experience that it is not usual to pay bonuses for that sort of thing. The respondent has, in effect, given some cost to those leases, because we have allowed $221,000 which was the fair market value of all of the leases except the Duke and Knoles pool. We have allowed that as cost, which is a sum almost $100,000 in excess of the known cost of every other item.

In regard to the burden of proof in this particular the Taylor case seems to be the thing on which the petitioners have based their argument. The Taylor case was a peculiar case. In that case an individual purchased certain preferred shares and received a share of common or bonus with each share of preferred. When he sold the preferred stock it became necessary to allocate the cost between the preferred and the common, and the way in which it usually is done is to take some proportion as the fair market value of the two kinds of stock on the day on which they were received, but in this case the Government took the ratio of the fair market value of those stocks on the day

on which the preferred was sold, which was two years after it was acquired. The Circuit Court of Appeals of the Second Circuit remanded the case to the Board for further hearing. The Board had held that the petitioner, not having shown what the fair market value was, or what the proper allocation was on the date of acquisition had failed in his burden of proof. The Circuit Court of Appeals sent it back and the United States Supreme Court affirmed the Circuit Court of Appeals. So that the effect of that decision was merely to remand the case to the Board for further hearing. Now, just what is to be read from that in regard to burden of proof is not altogether clear. As petitioner's counsel said a few moments ago when the case was sent back by the United States Supreme Court they did say who had the burden of proof on the particular point. The inference which the petitioners drew is that the Commissioner must take the burden of proof at any time that there is an error in the 60-day letter. Now, that is not in accordance with the previous rulings expressed in Burnett vs. Houston, and in Spalding vs. Reinecke, and in the Atlantic Bank vs. Commissioner, the latter being reviewed on the Board's decision. We believe there is a very great difference between the Taylor case and this case. That difference is pointed out in the Houghton case decided by the Second Circuit, which decided the Taylor case in the first instance. They said in regard to the Taylor case:

"We held that the method there adopted by the Commissioner was plainly untenable and sent the case back for another hearing, being unwilling to hold the taxpayer to disproving every possible value which the shares might have been found to have."

In this case by amended computation the Commissioner raised two minor issues, and took the burden of proof on those issues, and they had to do with the 20 per cent. limi-

tation, and the other corrections which he mentions which were made to the 60-day letter were corrections in the taxpayer's favor because the accurate facts were not known to the Commissioner at the time the 60-day letters were sent out, and when those facts were ascertained the Commissioner corrected his position in accordance with the facts. There were three computations before the Board. One was attached to the answer to the amended petition, another was submitted at the Presiding Member's request at the conclusion of the hearing before the Board, and the third, the one that is now before the Board. Now, except for the matter of values and the change in regard to the minor issues those three computations are substantially the same.

The Commissioner feels that we have been more than generous in allowing the $221,000 for the Sutton and Oldham County leases and the South American leases and these other miscellaneous leases which the case has shown is $63,000. That cost is $63,000 for the cost of these three groups, remembering that the cost of one is $63,000, the cost of the other $100,000. Miscellaneous leases $63,000 and the South American lease options cost Benedum and Parriott $100,000, and as I say the record does not show the cost to Benedum and Parriott of the wild-cat leases in Sutton and Oldham Counties in Texas. They were the rankest kind of wild-cat leases and were not promising. So, we believe that the Commissioner has allowed sufficient and more than sufficient basis to the taxpayer in this computation.

And, on the next point we believe that this matter of the amount of the $8,650,000 which the petitioners seem to feel must have come to Benedum and Parriott for the Tex-Penn stock is a matter in which the petitioners are not correctly interpreting the Board's findings. The matter seems to be an attempt to reargue that particular issue contrary to the Board's findings. The finding of the Board in regard to it was that:

"The cash received by Wrather, Lantz and Kirkland from Transcontinental was consideration for both their stock in Tex-Penn and their interests in the Duke-Knoles leases."

The Board also found that:

"The consideration received by Tex-Penn on or about August 1, 1919, in exchange for its assets consisted of $350,000 in cash and 1,007,834 shares of Transcontinental stock of no par value."

It seems to us that the argument which the petitioner is making is in conflict with the finding I have last read, because it assumes that certain cash came to the Tex-Penn Company or to Benedum and Parriott in addition to the $350,000 which the Board held that the Tex-Penn Company got. In other words, they want to enlarge that ultimate finding.

The Presiding Member: As I recall that finding it was correct to the point that if you came within the regulations it was necessary that both the corporation and its stockholders receive only stock and no cash. I think that is the way it is. This was to bring out the point that Wrather, Lantz and Kirkland got cash for their stock, part of it was cash. That would not mean it would come through the Tex-Penn.

Mr. Fullerton: I was prepared to demonstrate it would not, meaning it would not come through Tex-Penn. If the Board is convinced of that I will save time and not demonstrate it.

The Presiding Member: All right: go ahead.

Mr. Fullerton: I will pass that point, your Honor.

Mr. Angell: Your Honor, just before we get off of that point I think your attention ought to be called to a statement made by the Government in its brief which bears on this; Mr. Fullerton said on page 17 of the mimeographed copy that:

"Part of the cash which was received by the individuals as consideration for Tex-Penn Oil Company stock quite likely came to them only in one way, that is, by the liquidation of Tex-Penn assets and the distribution to its stockholders."

Now, we felt, apparently erroneously, but we felt that the Board had adopted that argument of the Government in connection with this question of some part of the cash.

Mr. Fullerton: That was my argument that the Board rejected. That was an argument that had to do with the rights of the creditors of Tex-Penn Oil Company in requiring that $350,000 to come to the Tex-Penn Oil Company.

In regard to this point that I am passing may I just mention one or two cases in order to get them into the record. One of them is the case of Lawrence v. Fox, 20 N. Y. 268; Hendrick v. Lindsay et al., 93 U. S. 143; Vrooman v. Turner, 69 N. Y. 280; 25 American Reporter 195, and 13 Corpus Juris, page 705.

Those four points, as I see it, constitute the entire objections of the petitioner, that the fair market value of the two-eighth interest in the Duke-Knoles properties and the fair market value of the 4,000 shares of Tex-Penn stock as of October 31, 1918, are not sound. The petitioner believes it was a cash transaction, but even if it was not we have to go back to the cost to the individuals because it was not a closed transaction since the Tex-Penn Company had no stock, had no fair market value, and the same argument applies to the exchange of the South American and Oldham leases for 66,800 shares of Tex-Penn stock on July 24, 1918.

The burden of proof is a legal matter and we do not believe that the Taylor case is applicable. The only corrections that the respondent made were corrections to lower the taxes to comply with the actual facts as ascertained.

We think that the respondent's computation should stand unless the Board sees fit to grant the motion for request for findings which we have filed which will tend to lower these two matters of basis.

Mr. Angell: Well, I do not desire to make any reply, your Honor, but I think, perhaps, for the purposes of the record I had better state my objections to the request and motion which Mr. Fullerton filed either this morning or yesterday. In that motion as I read it, the respondent asks for two additional findings of fact:

First that the two-eighths interest in the Duke-Knoles leases received by the Tex-Penn Oil Company on October 31, 1918, did not have any fair market value, and secondly, that the 66,880 shares of stock issued by Tex-Penn Oil Company on July 24, 1919, did not have any fair market value. Is that the tenor of your motion?

Mr. Fullerton: Those two are included, yes.

Mr. Angell: I should like to object on two grounds, first, that the motion being made for additional findings of fact is not timely, and, secondly, that the findings requested are not supported by the facts of record. There is no affirmative testimony establishing affirmatively that the properties in question did not have any fair market value, which I take it is required in view of the Board's established ruling that property has a fair market value unless it is shown to the contrary.

I should also like to make three purely formal motions.

Mr. Fullerton: Before that may I interject just a word?

Mr. Angell: Yes.

Mr. Fullerton: In regard to the motion on page 2 I seem to have omitted one item, and that is the organization expenses in the sum of $11,000 which the Commissioner concedes would be a part of that.

The Presiding Member: Before you go to that, I want to hear something more. As I understand the tenor of

your argument, Mr. Angell, it is that under the Taylor case the burden shifts to the Government, is that correct?

Mr. Angell: That is correct, your Honor.

The Presiding Member: As I understand the Taylor case, what the Court has in mind is expressed in this sentence: "That where, as in this case, the taxpayer's evidence shows the Commissioner's determination to be arbitrary and excessive, it may not reasonably be held that he is bound to pay taxes confessedly he does not owe unless there is evidence against him."

I have not heard you yet point out, or even claim that there was anything arbitrary or excessive in this phase of the matter we are now discussing. One of your points seems to be that the Commissioner did not increase the taxes enough. Again, you argue that we should determine the fair market value of the Duke-Knoles leases when this transaction occurred in October, 1918. You have not by testimony in the case, or motion filed or affidavits claimed that that value was at all in excess of $100,000.

Mr. Angell: Your Honor, the comments of the Supreme Court that you just quoted had to do with the Commissioner's determination in his 60-day notice. Now, we believe that the Commissioner's determination in his 60-day notice in these three cases was clearly arbitrary, erroneous and excessive, as evidenced by the 60-day letters themselves when compared with the state of the record and as illustrated by the Government's computation, both in respect to the reference to the matter of basis, because excessive tax comes both from excessive receipts and from two low a basis. In the Tex-Penn 60-day letter the receipts figure was stated at $48,272,506.70, as compared with the receipts figure in the Government's computation of $7,404,838.

The Presiding Member: Now, just take that. Suppose you had not proven anything: what would have happened?

Mr. Angell: Why, of course, the Commission's original determination would have stood.

The Presiding Member: All right. Now, why do you argue that you may take out one item of receipts and offer testimony on it and then stop? Might you not just as well have offered testimony on the basis and then stopped?

Mr. Angell: That is correct.

The Presiding Member: What would then have been the situation?

Mr. Angell: I think if the testimony which we have offered on the basis had been offered and then stopped had shown that the Commissioner's determination was arbitrary, excessive and erroneous the burden would have been on the Government to go forward.

The Presiding Member: That it was arbitrary by what kind of showing?

Mr. Angell: By showing as to the basis an understatement, and that the receipts were excessively overstated, of course the ultimate determination of the Government as to deficiency in tax on that figure is either largely increased by the overstatement of the receipts figure or largely increased by the understatement of the basis figure.

Member Van Fossan: Is there any desire on your part to submit additional testimony in support of any phase of this record?

Mr. Angell: No, your Honor. We are quite prepared to stand on the record as it now lies.

Member Van Fossan: Don't you appreciate the difference between this and the Taylor case in that there there was a dismissal for failure of proof, whereas here we have had proof, and we are considering recomputation?

Mr. Angell: I fully disagree with Mr. Fullerton. We feel that the Taylor case is applicable here. That is purely a question of law, your Honor.

The Presiding Member: But you are clear that you feel the burden is with the Government and you yourself do not want any opportunity to put in any testimony?

Mr. Angell: That is correct, your Honor. I think we are not called on to answer, but I am prepared to so state. We have made no motion for any additional testimony. We do not propose to make any motion.

The Presiding Member: Of course, as I understand this record you are not claiming, or, at least, if you are claiming it, you have not pointed out to me so that I can understand it, that the basis allowed by the respondent in this proposed recomputation serves to work any hardship whatsoever, or in its ultimate amount it is not sufficient.

Mr. Angell: I say this to your Honor, and perhaps it is difficult for me to make you understand our proposition, but suppose the question turns upon three acquisitions of property, the basis of one of which was established at $100,000, the second of which was established at $50,000, and on the third of which there is no proof as to its basis whatsoever, and the Government comes in with a computation and takes $100,000 and $50,000 in my illustration, whereas if proof had been adduced in respect to the third class of property it might have been shown that the basis of that class of property was $1,000,000. Therefore in that case I say that the basis of $150,000 is wholly erroneous under the doctrine in the Taylor case.

The Presiding Member: In the Taylor case, as I understand it, it was clearly pointed out that the basis used by the Government was wrong.

Mr. Angell: In the Commissioner's determination.

The Presiding Member: Yes, that it was wrong, and as my colleague says to the taxpayer's injury. As I remember the testimony generally in this case, the petitioner to support certain theories had rather minimized the value of these properties held by the Tex-Penn Company. If I am not mistaken it came out partly in connection with the sale of Wrather, Lantz and Kirkland's interest in that company for $30, which was claimed to be a

genuine transaction. So that, throughout the case they were minimizing that fact. I do not recall anything in this record, and nothing has been pointed out to me here which would indicate a value greater than that which has been found.

Mr. Angell: We have two fundamental omissions, as we see it, on the question of basis, the fair market value of the 4,000 shares of the Tex-Penn Company stock on October 31, 1918, which in turn is governed by the fair market value of the two-eighths interest in the Duke-Knoles leases. That may be very large or very negligible. It may be very large on the proof of basis. On the contrary, it may be very small.

Again, on July 24, 1919, we feel that there is a failure to prove the findings in respect to the fair market value of the 66,880 shares of the Tex-Penn stock. The proof might show those shares are of very large value, three-fourths of the entire issued stock, covering assets which under your Honors' findings were transferred for over $7,000,000 worth of property, and furthermore in your Honors' findings, in Finding No. 114 you find that the seven-eighths interest in the Duke-Knoles leases on or about August 1, 1919, had a substantial fair market value, but fixed no figure. I may say we do not know what that figure on the 66,880 shares is. It may be large or it may be small. The fixation of that figure is essential in the determination of income, for basis is one of the factors in figuring income. That, in a word, your Honor, is our position.

Member Van Fossan: Still, you do not feel that you have any obligation to submit any proof on those phases of it?

Mr. Angell: Not in the present state of the record, your Honor.

The Presiding Member: Of course, I take it there is no great significance in the fact that the stock went to Tex-Penn——

Mr. Angell: I do not believe I followed you.

The Presiding Member: I mean you seem to make some point that a certain amount of stock went to Tex-Penn.

Mr. Angell: I only pointed that out in connection with the discussion of some part cash question which had to do with receipts rather than basis.

The Presiding Member: Is there anything further?

Mr. Fullerton: I have nothing further, your Honor.

Mr. Angell: I have three formal motions to make. On behalf of the Tex-Penn Oil Company, from the present state of the record, including the pleadings, the testimony, the Board's findings, and opinion, I move that the Board enter an order of deficiency against the Tex-Penn Oil Company in taxes, $12,637.64. The reasons and grounds of such motions are the reasons and grounds as set forth in our objection to the Government's computation and in our own counter-computation.

On behalf of the petitioner Benedum, upon the present state of the record, including the pleadings, the testimony, the Board's findings, and the Board's opinion, I move that a deficiency order be entered against the petitioner Benedum of $36,760.63. The reasons and grounds of such motion are the reasons and grounds as set forth in our objection to the Government's computation and in our own counter-computation.

On behalf of the petitioner Parriott upon the present state of the record, including the pleadings, the testimony, the Board's findings, and the Board's opinion, I move that a deficiency order be entered against the petitioner Parriott of $10,298.13. The grounds and reasons in support of this motion are the reasons and grounds as set forth in our objection to the Government's computation and our own counter-computation.

May I ask that if the motions are denied I may be allowed exceptions, and if the counter-computations which we have submitted are not accepted that I be allowed exceptions to the failure of the Board to adopt such counter-computations in the settlement of the case?

The Presiding Member: I am ready to make a ruling now.

Mr. Fullerton: May I object to the granting of the motions?

The Presiding Member: I rule that the several motions just made are denied.

Mr. Angell: An exception.

(An exception was allowed.)

The Presiding Member: Deficiencies will be determined in the amount found in the respondent's computations in these three cases, Tex-Penn Oil Company, Docket No. 11539, M. L. Benedum, Docket No. 30990, and F. B. Parriott, Docket No. 30989.

Mr. Angell: May I have an exception to the adoption of the computations as announced?

(An exception was allowed.)

The Presiding Member: The motion made by the respondent for additional findings, which was filed July 17, 1935, will be denied. Does that cover everything?

Mr. Fullerton: I think it does, your Honor.

(The above and foregoing are all of the proceedings had in the above-entitled matter whereupon, at 11.55 o'clock, A. M., the hearing was concluded.)

## Petitioner's Exhibit No. 1.

Treasury Department letter addressed to M. L. Benedum and dated November 15, 1924.

(Attached to the petition in Docket No. 30990 and included in pleadings; see page 2069, *post.*)

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## Petitioner's Exhibit No. 2.

Treasury Department letter addressed to M. L. Benedum and dated July 8, 1927.

(Attached to the petition in Docket No. 30990 and included in pleadings; see page 2072, *post.*)

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## Petitioner's Exhibit No. 3.

Treasury Department letter addressed to F. B. Parriott and dated July 8, 1927.

(Attached to the petition in Docket No. 30989 and included in pleadings; see page 2220, *post.*)

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## Petitioner's Exhibit No. 4.

Treasury Department letter addressed to Tex-Penn Oil Company and dated December 16, 1925.

(Attached to the petition in Docket No. 11539 and included in pleadings; see page 40, *ante.*)

## Petitioner's Exhibit No. 5.

TEX-PENN OIL COMPANY
H. M. REIGLE, GENERAL SUPT.
De Leon, Texas

Main Office: 1110 Benedum-Trees Building
Pittsburgh, Pa.

Mr. M. L. Benedum,
Pittsburgh, Pa.

Dear Sir:

You are hereby authorized and directed to sell the entire holdings of the Tex-Penn Oil Company together with the individual interests held by us in the properties operated by the Tex-Penn Oil Company for the net sum of Twelve Million Dollars ($12,000,000.00), such sale to be made on or before the fifteenth day of July, 1919, the undersigned parties hereby agreeing to accept their pro-rata of the net proceeds of such sale as full and adequate consideration for their entire holdings in the Tex-Penn Oil Company as well as for their individual interests in the properties operated by said company.

We hereby agree to deliver adequate transfers of title to you or your assigns upon the payment of the above mentioned purchase price, either in cash or in such deferred payments as shall later be mutually agreed upon.

Witness our hand and seal at DeLeon, Texas, this second day of June, 1919.

J. L. KIRKLAND (SEAL)
J. B. LANTZ (SEAL)
W. E. WRATHER (SEAL)
F. B. PARRIOTT (SEAL)

Witnesses
A. E. KIRKLAND
A. OLIVEY

## Petitioner's Exhibit No. 6.

*(Duplicate Original)*

M. L. BENEDUM
Pittsburgh, Pa.

June 17th, 1919.

Messrs. E. W. Clark & Co.,
Messrs. Prichitt & Co.

Gentlemen:

I beg to state and confirm the agreement we have reached in our recent negotiations regarding your purchase of 500,000 shares of the stock of a Company now being organized under the laws of the State of Delaware, under the name of "Transcontinental Oil Company."

The Company is to have an authorized and issued capital of 2,000,000 shares of stock without nominal or par value, and is to acquire all of the properties of the Tex-Penn Oil Company (including all outstanding fractional interests in its leases in what is known as the "Duke-Knoles Pool"), Pittsburgh-Texas Oil & Gas Company, Riverside Eastern Oil Company, Riverside Western Oil Company, and their several subsidiaries. A description of the properties of the new Company is contained in a letter that is being written you under even date by Mr. F. B. Parriott.

Subject to the approval of your counsel, Messrs. Feiner and Maass, of New York City, (a) of the organization of the new Company, (b) of the legality of the issuance of its stock and (c) of the legality of the acquirement by it of title to its several properties, you agree to purchase 500,000 shares of the Capital Stock of the Transcontinental Oil Company at the price of $40.00 per share, amounting in the aggregate to $20,000,000, it being understood that you will organize a syndicate to purchase said 500,000 shares of stock at the price named, the entire proceeds of such sale to be turned over to the new Company, to be used by it as working capital and for the acquirement of its properties.

*Petitioner's Exhibit No. 6.*

For the services to be rendered by you in thus financing the Transcontinental Oil Company by the organization of such a syndicate and the disposition of the Company's stock as above provided, you are to have and receive as compensation, 50,000 shares of the Capital Stock of the Transcontinental Oil Company.

Settlement hereunder for the 500,000 shares firm purchase shall be made upon seven days' written notice by me to you that the new Company is organized, that temporary certificates of its stock are ready for delivery to you or your nominees, and that all things have been done and papers drawn ready for immediate delivery of title to the new Company at the date of settlement and contemporaneously with the payments thereunder.

In connection with the question of the approval of your counsel, the following is understood:

1. That your counsel shall cooperate with mine in order that any objections they may have may be presented at the earliest possible moment and expedition secured:

2. The titles which the new Company is to secure are the titles as they are of the various companies mentioned above, and the titles of the owners of the outstanding fractional working interests mentioned above in the "Duke-Knoles" pool:

3. That there cannot possibly be any outstanding objecting minority interests in the Tex-Penn Company properties, or as to the fractional working interests in the leases of that Company mentioned above in the "Duke-Knoles" pool. There are certain stocks of the other three companies, however, that are outstanding on the market, and while I have no reason to expect any objections by any of these outstanding minority stockholders, yet there may be such, and if serious objection develops in the way

of obstructing litigation, there is to be cooperation between yourselves and me to overcome the difficulty created thereby.

All expenses incident to the organization of the new Company, the acquisition of its properties and the issuance of its stock, shall be borne by the new Company. It is understood, however, that your own expenses in marketing the stock, including the fees of your counsel, shall be borne by you.

The 50,000 shares of stock that you are to receive, as above provided, by way of compensation, are likewise to be turned over to you or your nominees.

If this conforms to your understanding, will you kindly sign the duplicate original hereof, beneath the words "Approved and accepted" and return the same to me, whereupon this letter and the duplicate original thereof, so signed by you, will constitute our agreement.

Yours very truly,

(s) M. L. BENEDUM

Approved and accepted:

(s) E. W. CLARK & CO.
(s) PRITCHITT & CO.

## Petitioner's Exhibit No. 7.

*(Duplicate Original)*

M. L. BENEDUM
Pittsburgh, Pa.

June 17th, 1919.

Messrs. E. W. Clark & Co.,
Messrs. Prichitt & Co.

Gentlemen:

Referring to my letter to you, of this date, regarding your financing of the Transcontinental Oil Company by the sale of 500,000 shares of its stock for $20,000,000 and as an additional inducement to you to undertake this financing, I beg to confirm our agreement that in the event the $20,000,000 cash is raised by you for the new Company, as provided in said letter, I personally give and grant you the right and option at any time prior to January 31, 1920, to purchase from me all or any part of 200,000 additional shares of the stock of the Transcontinental Oil Company at and for the price of $1.00 per share.

As soon as settlement is made under your contract to raise $20,000,000 for the new Company by the sale of 500,000 shares of its stock, I agree to deposit in escrow with B. Y. Frost & Co., 80 Broadway, New York City, certificates representing said 200,000 shares covered by your option, with authority to B. Y. Frost & Co. to deliver all or any part of such 200,000 shares to you or your nominees from time to time and at any time prior to January 21, 1920, and in such amounts as you may specify, against payment to them for my account of $1.00 per share therefor.

Will you please confirm this understanding by endorsing your approval upon the duplicate original of this letter and return same to me.

Very truly yours,

(s) M. L. BENEDUM

Approved and accepted:

(s) E. W. Clark & Co.

(s) Prichitt & Co

## Petitioner's Exhibit No. 8.

June 17th, 1919.

TRANSCONTINENTAL OIL COMPANY, a corporation of Delaware, if, as and when organized:

Gentlemen:

We understand from negotiations which have been proceeding between Mr. M. L. Benedum and associates and ourselves, that your company is about to be organized under the laws of the State of Delaware with an authorized and issued capital of 2,000,000 shares of stock without nominal or par value, to acquire and take over all of the properties of the Tex-Penn Oil Company (including all outstanding fractional interests in its leases in what is known as "Duke-Knoles Pool"), Pittsburgh-Texas Oil & Gas Company, Riverside Eastern Oil Company, Riverside Western Oil Company, and their several subsidiaries, a description of the several properties of your company as they will exist when its organization and incidental proceedings are completed being contained in a letter written to us under even date, signed by Mr. F. B. Parriott.

Subject to the approval of our counsel (a) as to the organization of the new company, (b) the legality of the issuance of its stock, and (c) the legality of the acquirement by it of title to its several properties, we are willing to purchase from you 500,000 shares of the capital stock of your company at and for the price of $40. per share, amounting in the aggregate to $20,000,000., and to form and organize a Syndicate to purchase and market the same at the price named, IT BEING UNDERSTOOD that the entire proceeds of such sale are to be used and employed by you as working capital and in the acquirement of properties.

*Petitioner's Exhibit No. 8.*

For our services to be rendered to you in organizing such Syndicate and selling and disposing of said stock, we are to have and receive a bankers' commission of 25,000 shares of the capital stock of your company and in addition thereto, and as further compensation, the right, option and privilege at any time on or before January 31st, 1920, to purchase from you all or any part of 225,000 additional shares of the capital stock of your company at and for the price of $1. per share. Said 225,000 shares of stock are to be duly issued by you and deposited in escrow with Messrs. B. Y. Frost & Co., No. 80 Broadway, New York City, to be delivered by them to us at such times, from time to time, and in such amounts as we may elect, against payment therefor by us at $1. per share, any stock not taken up and paid for by us under such option prior to the expiration date thereof to be returned to you. Our right to exercise said option in whole or in part is in any event conditioned on our having first taken up and paid for, or caused to be taken up and paid for, said 500,000 shares at $40. per share.

With regard to the 500,000 shares firm purchase, we agree that upon 7 days' written notice to be given by you to us that your company is duly organized, that temporary certificates of its stock are ready for delivery to us or our nominees, and that all things have been done and appropriate papers drawn and executed immediately to vest in your company title to the various properties it is to acquire, we will make payment for said 500,000 shares, aggregating $20,000,000. as herein provided.

In connection with the question of the approval of our counsel the following is understood:

1. That our counsel shall co-operate with yours in order that any objections they may have may be presented at the earliest possible moment and expedition secured:

*Petitioner's Exhibit No. 8.*

2. The titles which your company is to secure are the titles as they are of the various companies mentioned above, and the titles of the owners of the outstanding fractional working interests mentioned above in the "Duke-Knoles" pool;

4. That there cannot possibly be any outstanding objecting minority interests in the Tex-Penn Company properties, or as to the fractional working interests in the leases of that company mentioned above in the "Duke-Knoles" pool. There are certain stocks of the other three companies, however, that are outstanding on the market, and while there is no reason to expect any objections by any of these outstanding minority stockholders, yet there may be such, and if serious objection develops in the way of obstructing litigation, there is to be co-operation between us to overcome the difficulty created thereby.

All expenses incident to the organization of your company and the acquisition of its properties and the issuance of its stock are to be borne by you; all expenses in marketing the stock and the fees of our counsel are to be borne by us.

At the time of settlement for the 500,000 shares firm purchase as hereinabove provided, you are likewise to deliver to us the 25,000 shares of stock constituting our banking commission, and simultaneously therewith, are to deliver to Messrs. B. Y. Frost & Co., 80 Broadway, New York City, certificates representing 225,000 shares of stock upon which we are given an option as hereinbefore provided, which said certificates shall be duly stamped and endorsed for transfer so as to be negotiable by delivery.

As it is our purpose immediately to organize a Syndicate for the purchase of said 500,000 shares of the stock of your company "if, as and when the same are issued and delivered to us," we would thank you to take the necessary corporate action to accept this contract at the earliest

possible moment, communicating such action to us by having the appropriate officers of your company sign the duplicate-original of this letter beneath the words "approved and accepted," and returning the same to us, whereupon this letter and such duplicate-original thereof so signed in the name of your company, shall constitute the agreement between us.

Very truly yours,

PRICHITT & CO.
E. W. CLARK & CO.

APPROVED AND ACCEPTED:

TRANSCONTINENTAL OIL COMPANY
A. B. DALLY, JR.
President.
[CORPORATE SEAL]

ATTEST:

S. A. McCASKEY
Secretary.
July 26th, 1919.

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## Petitioner's Exhibit No. 9.

KNOW ALL MEN BY THESE PRESENTS:

That we, F. B. Parriott of Pittsburgh, Pa., J. L. Kirkland of Wheeling, West Va., W. E. Wrather of Wichita Falls, Texas, and J. B. Lantz of Arkansas City, Kansas, being sole individual owners of undivided interests comprising the whole of certain leases for oil and gas purposes and leasehold estates therein created, covering certain lands situated in Comanche, Eastland and Erath

Counties, Texas, our undivided interests being as follows: F. B. Parriott nine-sixteenths; J. L. Kirkland three-sixteenths; W. E. Wrather two-sixteenths; and J. B. Lantz two-sixteenths said leases being more particularly described as follows:

(*List of leases omitted.*)

the above leases being the same conveyed by R. O. Harvey, lessee, to F. B. Parriott.

Whereas it is the desire of the parties hereto for their mutual benefit and protection to enter into an agreement for the development and operation of the above described lands for oil and gas purposes, it is hereby mutually understood and agreed by and between the parties hereto that for and in consideration of the mutual covenants and agreements contained herein and for other good and valuable considerations passing between the parties hereto, receipt of which is hereby acknowledged, we hereby mutually agree each with the other and bind ourselves, our heirs and assigns as follows:

*First.* We hereby constitute and appoint F. B. Parriott of Pittsburgh, Pa. our agent to act for us and in our stead in the purchase of necessary material, supplies and equipment for the development, and operation of said property; to execute division orders; to sell and to contract for the sale of oil and gas produced from the said property; to collect and disburse any and all sums of money accruing therefrom; to act for us in securing and disbursing all necessary funds for the development and operation of the property, and in securing outstanding interests and perfecting titles to any of the leasehold estates herein described; and to perform any and all acts not specifically herein set forth which may be necessary from time to time in connection with the development and operation of said property.

*Second.* F. B. Parriott, J. L. Kirkland, W. E. Wrather and J. B. Lantz are hereby appointed and constituted an advisory committee, which committee shall meet from time to time as occasion requires to discuss, decide upon and govern the policies to be pursued in the operation of the property and the general conduct of the business, it being understood and agreed that the votes of three individual members of the committee shall constitute a majority and be binding in all matters considered. The meeting place of said committee shall be at the office of F. B. Parriott in Pittsburgh, Pa. unless otherwise mutually agreed upon.

*Third.* It is hereby understood and agreed that the covenants and agreements herein contained shall be binding upon the parties hereto, their heirs and assigns for a term of two (2) years from the date hereof.

In Witness Whereof we have hereunto set our hands and seals this 26th day of Sept., 1918.

F. B. PARRIOTT (SEAL)
J. L. KIRKLAND (SEAL)
W. E. WRATHER (SEAL)

*(Acknowledgment omitted.)*

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## Petitioner's Exhibit No. 10.

Ratification of Parriott's acts as agent, signed by J. L. Kirkland, J. B. Lantz, W. E. Wrather and F. B. Parriott.

(Substance recited in statement of evidence; see page 616, *ante.*)

## Petitioner's Exhibit No. 11.

(Sometimes also referred to as Petitioner's Exhibit Zellman No. 12.)

THIS AGREEMENT made the thirty-first day of October A. D. 1918, by and between J. L. KIRKLAND, of Wheeling, West Virginia, J. B. LANTZ, of Arkansas City, Kansas, W. E. WRATHER, of Wichita Falls, Texas, and F. B. PARTIOTT, of Pittsburgh, Pennsylvania, parties of the first part, and the TEX-PENN OIL COMPANY, a corporation created and organized under the laws of the State of West Virginia, party of the second part,

WITNESSETH: That the said parties to these presents for and in consideration of the covenants, agreements and stipulations thereof on their respective parts to be done, paid, kept, observed or performed, have covenanted, promised and agreed, and by these presents do covenant, promise and agree, to and with each other and each for their respective parts in manner following, that is to say:

FIRST: That the said parties of the first part shall and do hereby grant, bargain, sell, assign, transfer, set over and convey unto the said party of the second part, its successors and assigns, all and singular those certain so-called oil, gas and mineral leases and contracts, in, upon and out of lands situate in the Counties of Comanche and Erath, State of Texas, that is to say:

(*Description of leases omitted.*)

TOGETHER with any well or wells now down or being put down upon the said lands for the purpose of procuring oil and natural gas and the property of every kind and nature to the said leases and wells belonging or in anywise appertaining and placed upon or produced from the said lands, including among other things, all oil in tanks and what may have been run therefrom to the date of these

presents. But it is provided always nevertheless that there is kept, saved, excepted and reserved always unto the said parties of the first part, their heirs, executors, administrators, and assigns, the five-eighths part, portion, share and interest of, in and to all the oil already produced and saved from the said lands or that may hereafter be produced and saved therefrom, together with five-eighths part, portion, share and interest of, in and to all the natural gas and gasoline produced and saved from the said lands, the said five-eighths part, portion, share and interest in the said oil, natural gas and gasoline to be produced and delivered to the said parties of the first part, free from each and every charge, cost and expense incurred in the holding, exploration or development of the said lands, the operations conducted thereon and property purchased therefor: but it is provided always, nevertheless, in this behalf that there shall be paid unto the said F. B. Parriott, who is one of the said parties to these presents, five-sixteenths of the proceeds derived from the sale of oil, natural gas and gasoline under these presents, who shall apply the same to the payment of the indebtedness of the said party of the second part in the way and manner following, that is to say: That, commencing on the first day of July, 1919, settlements shall be made by and between the said party of the second part and the said F. B. Parriott, semi-annually, that is to say: on the first day of July and the first day of January in each and every year during the terms of these presents, at which said settlement there shall be ascertained the total amount of money that may meanwhile have been received by the said party of the second part, as well as its expenditures made and indebtedness and obligations incurred during the same time, and should the money that may have been received by the said party of the second part be less than the sum of its expenditures, indebtedness and obligations aforesaid, there shall be applied by the said F. B. Parriott whatsoever sum

or amount may be required to pay off or satisfy the said indebtedness and obligations, retaining for himself and the other parties of the first part to these presents, whatsoever sum or balance may remain in his hands. And it is further provided always with reference to the said five-eighths part, portion, share and interest of, in and to the said oil, natural gas and gasoline by these presents kept, saved, excepted and reserved unto the said parties of the first part, their heirs, executors, administrators and assigns, as aforesaid, that in every instance when it may become impossible for the said party of the second part to make delivery in kind that a proportionate part of the gross income in money may and shall be substituted.

SECOND: That the said party of the second part assume and pay when from time to time the same become due and payable, each and every debt, liability, charge, cost and expense remaining unpaid the date of these presents on account of the said lands, operations and properties, and keep free and save harmless the said parties of the first part from the same; that the said party of the second part shall at all times and at its own charge, cost and expense, so conduct all operations upon the said lands as to best obtain and maintain the highest development and production in every behalf.

THIRD: That the said party of the second part shall well and truly pay unto the said parties of the first part at and before the ensealing and delivery of these presents, the just and full sum of One Hundred Thousand Dollars, in the proportions following, that is to say: Unto the said J. L. Kirkland, Eighteen Thousand Seven Hundred and Fifty Dollars, unto the said J. B. Lantz, Twelve Thousand Five Hundred Dollars, unto the said W. E. Wrather, Twelve Thousand Five Hundred Dollars, and unto the said E. B. Parriott, Fifty Six Thousand Two Hundred and Fifty Dollars.

*Petitioner's Exhibit No. 11.*

FOURTH: That the said party of the first part shall have the right and option during the term of five years from and after the date of these presents, if and as they may elect, to purchase the whole or any part of the shares remaining unsold of the capital stock of the said party of the second part, the consideration to be cash at par and the right or option on the part of the said party of the second part to purchase, have, hold and take the five-eighths portion, share and interest of the oil, natural gas and gasoline reserved by the said parties of the first part as aforesaid in the way and manner and under the terms and conditions following, that is to say: That the said party of the second part shall have the right and option, if it so elect, to purchase from the said parties of the first part, and have, hold, obtain and take in proper conveyance, the said five eighths part, portion, share and interest of, in and to all the oil, natural gas and gasoline at and for the nominal price of one dollar and the other valuable considerations that appear in these presents, but it is provided always that this right shall not mature to the said party of the second part or be enforceable unless and until the whole of its shares of capital stock remaining unsold shall have been purchased by the said parties of the first part, and the right or option be exercised within two years after such time, and it is further provided always nevertheless that the said conveyance shall not include any oil, natural gas, gasoline or money income that up to said time may have already been produced and received by or due to the said parties of the first part by reason or on account of the said reservation.

FIFTH: That these presents shall extend to, include and mean the heirs, executors, administrators, successors and assigns of the parties hereto respectively.

*Petitioner's Exhibit No. 11.*

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, and the said party of the second part has caused its name by the hand of its President and its common and corporate seal to be hereunto affixed the day and year first above written.

J. L. KIRKLAND (SEAL)
J. B. LANTZ (SEAL)
W. E. WRATHER (SEAL)
F. B. PARRIOTT (SEAL)

Signed, sealed and delivered in the presence of

.....

.....

.....

TEX-PENN OIL COMPANY
Per GEORGE J. WOLF
President

[CORPORATE SEAL]

Attest:

J. M. HOLLIDAY
Secretary

(*Acknowledgments omitted.*)

## Petitioner's Exhibit No. 12.

(Sometimes also referred to as Petitioner's Exhibit Zellman No. 16.)

THIS AGREEMENT made and entered into the thirty-first day of October A. D. 1918, by and between F. B. PARRIOTT, of Pittsburgh, Pennsylvania, J. L. KIRKLAND, of Wheeling, West Virginia, J. B. LANTZ, of Arkansas City, Kansas, and W. E. WRATHER, of Wichita Falls, Texas, WITNESSETH:

WHEREAS, The said parties to these presents did become parties to and did make and enter into that certain other Agreement bearing even date herewith to and with the TEX-PENN OIL COMPANY, a corporation created and organized under the laws of the State of West Virginia, a copy of which said Agreement is attached to and made a part of these presents, and

WHEREAS, It is the purpose, aim and desire of the said parties to these presents to mutually conserve, preserve and promote their respective interests under the said Agreement and evidence their efforts in that behalf by these presents.

NOW, THEREFORE, it is for and in consideration of the premises and the covenants, agreements, stipulations and conditions of these presents on their respective parts to be done, paid, kept, observed or performed, that the said parties thereto have covenanted, promised and agreed, and by these presents do covenant, promise and agree to and with each other and each for their respective parts in manner following, that is to say:

FIRST:—That the said parties to these presents shall and do hereby create and declare a trust under which all their respective interests in the said Agreement with the Tex-Penn Oil Company and their interests in the said so-called

oil, gas and mineral leases and contracts therein set forth shall be had, held, owned, cared for, dealt with, controlled and managed.

SECOND:—That the said J. L. Kirkland, the said J. B. Lantz, and the said W. E. Wrather shall and do hereby grant, bargain, sell, assign, transfer, set over and convey unto the said F. B. Parriott, all and singular their respective rights and interests under the said Agreement with the Tex-Penn Oil Company and the said so-called oil, gas and mineral leases and contracts, and the said F. B. Parriott, shall have, hold, own, care for, deal with, control and manage all of the said rights and interests along with whatsoever rights and interests he may himself be personally entitled to under the said Agreement with the Tex-Penn Oil Company and the said so-called oil, gas and mineral leases and contracts, always and entirely in trust for the purposes of these presents and not otherwise.

THIRD:—That a duplicate of these presents shall be served upon the said Tex-Penn Company who shall be, and it is hereby authorized, empowered and directed to do, pay, keep, observe and perform to and with the said F. B. Parriott, all and all manner of acts and things required of it under its hereinbefore recited Agreement with J. L. Kirkland and others, with the same force and effect and to all intents and purposes the same as if the said F. B. Parriott were the only party of the first part to the said Agreement and without responsibility to any of the other or remaining parties to the said Agreement otherwise; that the said F. B. Parriott shall be and he is hereby authorized, empowered and directed irrevocably to ask, demand, recover, receive and receipt for all oil, natural gas, gasoline, money or other things that may become due, deliverable, recoverable or payable from the said Tex-Penn Oil Company under its said Agreement with J. L. Kirkland and others.

*Petitioner's Exhibit No. 12.*

FOURTH:—That when and as often as it shall become necessary according to law, for the said parties to these presents to make reports of income to State or National Governments for the purposes of taxation, the said F. B. Parriott shall estimate or ascertain as nearly as possible what rate or percentage in taxation may be due and payable for and on account of income due or derived from and under the interest in the said so-called oil, gas and mineral leases and contracts and the said Agreement with the Tex-Penn Oil Company, of that one of the said parties to these presents in whom may reside the largest interest, and out of the money then in his hands, well and truly pay unto each of the said parties to these presents, that sum which the rate or percentage ascertained as aforesaid will yield when calculated or computed upon the income due or derived from their respective interests in the said so-called, oil, gas and mineral leases and contracts and the said Agreement with the Tex-Penn Oil Company; and with whatsoever income may be due or derived from or under the said interests of the said parties to these presents in the said so-called oil, gas and mineral leases and contracts and the said Agreement with the Tex-Penn Oil Company, save and except the amounts required to be distributed and paid to the said parties of these presents as aforesaid, shall be used and employed from time to time by the said F. B. Parriott in the purchase of shares of the capital stock of the said Tex-Penn Oil Company under the provisions of the said Agreement with that Company.

FIFTH:—That when and as often as the said F. B. Parriott shall have purchased and obtained shares of the capital stock of the said Tex-Penn Oil Company as required under these presents, he shall distribute and deliver the same to and among the said parties to these presents, their heirs, executors, administrators and assigns proportionate to their then respective interests; and that these

presents shall be and constitute the evidence of the fact that the respective interests of the said parties thereto at the date thereof are as follows:—F. B. Parriott, nine-sixteenths, J. L. Kirkland, three-sixteenths, J. B. Lantz, two-sixteenths, and W. E. Wrather, two-sixteenths.

SIXTH:—That the term of these presents shall be the seven years next ensuing the date thereof, unless it be sooner ended perforce of its own conditions or the consent of all parties in interest, and at the end of the said term the said F. B. Parriott shall make and render a full and accurate account of all things done by him under the trust by these presents created and declared, and at the same time deliver unto his cestuis que trust whatsoever of money or property that may remain in his hands or title respectfully due them.

SEVENTH:—That these presents shall extend to, include and mean the heirs, executors, administrators, successors and assigns of the parties thereto respectively.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

F. B. PARRIOTT (SEAL)
J. L. KIRKLAND (SEAL)
J. B. LANTZ (SEAL)
W. E. WRATHER (SEAL)

Signed, sealed and delivered
in the presence of

.....
.....
.....

*(Acknowledgments omitted.)*

**Petitioner's Exhibit No. 13.**

F. B. Parriott,
President

S. E. Drum,
Asst. Sec'y-Treas.

TEX-PENN OIL COMPANY
Benedum-Trees Building
Pittsburgh, Pa.

Pittsburgh, Pa.
July 12th, 1919.

Mr. F. B. Parriott,
Benedum-Trees Building,
Pittsburgh, Pa.

Dear Mr. Parriott:

In connection with the assignment we have executed today, transferring to the Transcontinental Oil Company all of our right, title and interest in the oil and gas leases on lands in Comanche County, Texas, we are assigning and hand you herewith our shares of stock in the Tex-Penn Oil Company. It is understood that if, for any reason, the proposed organization of the Transcontinental Oil Company should not go through, this stock will be returned to us.

We understand that you and Mr. Benedum are transferring to the Transcontinental Oil Company a considerable amount of property that you and he own, either directly or through stock ownership, including your interests in the Tex-Penn leases, and that you and he are to be paid for all these properties partly in cash and partly in stock of the Transcontinental Oil Company. Our entire interests in the stock of the Tex-Penn Company and in the leases covered by the assignment above referred to are paid for in full by the $5,250,000 that is to be paid us in this transaction.

Yours very truly,

W. E. WRATHER
J. L. KIRKLAND
J. B. LANTZ

**Petitioner's Exhibit No. 14.**

F. B. Parriott,
President

S. E. Drum,
Asst. Sec'y-Treas.

TEX-PENN OIL COMPANY
Benedum-Trees Building
Pittsburgh, Pa.

Pittsburgh, Pa.
July 12th, 1919.

Mr. F. B. Parriott,
Benedum-Trees Building,
Pittsburgh, Pa.

Dear Mr. Parriott:

In connection with the assignment we have executed today, transferring to the Transcontinental Oil Company all of our right, title and interest in the oil and gas leases on lands in the Comanche County, Texas, we are assigning and hand you herewith our shares of stock in the Tex-Penn Oil Company, which we hereby agree to sell to you and M. L. Benedum jointly for a consideration of $5.00 payable to each of us. If for any reason the proposed organization of the Transcontinental Oil Company should not go through, this stock is to be returned to us.

We understand that you and Mr. Benedum are transferring to the Transcontinental Oil Company a considerable amount of property that you and he own, either directly or through stock ownership, including your interests in the Tex-Penn leases, and that you and he are to be paid for all these properties partly in cash and partly in stock of the Transcontinental Oil Company. Our entire interests in the stock of the Tex-Penn Oil Company and in the leases covered by the assignment above referred to are paid for in full by the considerations agreed upon between us.

Yours very truly,

W. E. WRATHER
J. B. LANTZ
J. L. KIRKLAND

## Petitioner's Exhibit No. 15.

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS

OF

TEX-PENN OIL COMPANY

A special meeting of the stockholders of the Tex-Penn Oil Company was held at the Company's office in the Benedum-Trees Bldg., Pittsburgh, Pa. on Tuesday, July 22nd, 1919 at 4:00 P. M., pursuant to the following call and waiver signed by the holders of all of the outstanding stock of the Company.

"We, the undersigned stockholders of the Tex-Penn Oil Company; owning the number of shares of stock set opposite our names respectively, hereby call and agree to hold a special meeting of the stockholders of said Company at the Company's office in Pittsburgh, Pa. on the 22nd day of July, 1919 at 4:00 P. M., for the purpose of filling vacancies in the Board of Directors of said Company, caused by the fact that several former members of the Board have ceased to be stockholders of the Company; and for the further purpose of authorizing the issuance of the balance of the authorized but unissued Capital Stock of the Company; and we hereby waive notice of said meeting."

| | |
|---|---|
| George J. Wolf | 1 share |
| S. E. Drum | 1 share |
| C. F. Ehrentraut | 1 share |
| E. D. Robinson | 1 share |
| F. B. Parriott<br>M. L. Benedum | 13116 shares |

Mr. F. B. Parriott was elected Chairman of the meeting and Miss S. E. Drum was elected Secretary of the meeting.

*Petitioner's Exhibit No. 15.*

The Secretary was directed to ascertain the number of stockholders present and after canvassing the meeting, she reported that all of the stockholders were present in person and participated in the meeting.

The President stated to the meeting that there were three vacancies in the Directors of the Company due to the fact that Mr. J. L. Kirkland, Mr. W. E. Wrather and Mr. J. B. Lantz had ceased to be stockholders in the Company and that it would be in order to elect three additional persons from among the stockholders, to the Board.

Miss S. E. Drum, Mr. C. F. Ehrentraut and Mr. E. D. Robinson, all stockholders of the Company, were thereupon placed in nomination for Directors; and upon motion duly made, seconded and carried, the nominations were closed. A vote was thereupon taken and it was ascertained that all the votes present had been cast in favor of the persons nominated and they were accordingly declared elected.

Upon motion duly seconded, it was unanimously

RESOLVED that the Board of Directors be and they are hereby authorized to issue all of the present authorized and unissued stock of this Company in consideration of property or interests therein.

On motion, duly seconded, the meeting adjourned at 5:00 P. M.

S. E. DRUM
Secy.

## Petitioner's Exhibit No. 16.

F. B. Parriott,
President

S. E. Drum,
Asst. Sec'y-Treas.

TEX-PENN OIL COMPANY
Benedum-Trees Building
Pittsburgh, Pa.

July 14th, 1919.

Mr. F. B. Parriott,
Benedum-Trees Building,
Pittsburgh, Penn'a.

Dear Mr. Parriott:

We have this day executed, together with the Tex-Penn Oil Company and yourself, an assignment, transferring to the Transcontinental Oil Company, all our right, title and interest in certain oil and gas leases on lands in Comanche and other counties in the State of Texas, held by us in common. We have also assigned and transferred to you all of our stock in the Tex-Penn Oil Company.

The assignment of the leases is delivered to you in escrow and is to be delivered by you to the Transcontinental Oil Company only upon payment to us, or to you for our account, of sums aggregating Five Million Two Hundred Fifty Thousand ($5,250,000.00) Dollars, which are to be paid to us as follows:

| | |
|---|---|
| J. L. Kirkland | $2,250,000.00 |
| J. B. Lantz | 1,500,000.00 |
| W. E. Wrather | 1,500,000.00 |

It is understood that settlement will be made on or before August 1st, 1919. In case of default in payment of above sums by August 1st, 1919, the assignment, together with our shares of stock are to be returned to us.

*Petitioner's Exhibit No. 16.*

In order that the Tex-Penn Oil Company may be free from debt, we hereby authorize you to apply and deduct from our distributive shares, sufficient of the above amount, not exceeding, however, seven-sixteenths of Five Hundred Thousand ($500,000.00) Dollars, to pay the debts and obligations of the company, after applying thereto its bills and accounts receivable and stocks of oil on hand as of July 1st, 1919; it being understood that you are to bear your nine-sixteenths proportion of such liquidation.

Yours very truly,

(s) W. E. WRATHER
(s) J. L. KIRKLAND
(s) J. B. LANTZ

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**Petitioner's Exhibit No. 17.**

STATE OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } ss.:

KNOW ALL MEN BY THESE PRESENTS

THIS contract, assignment and transfer this date made and entered into by and between the TEX-PENN OIL COMPANY, a corporation, incorporated under the laws of the State of West Virginia, acting herein by resolution of its Board of Directors, and by and through its President, F. B. PARRIOTT; and J. L. KIRKLAND of Wheeling, W. Va.; J. B. LANTZ of Arkansas City, Kansas; W. E. WRATHER of Dallas, Texas; F. B. PARRIOTT, individually, of Pittsburgh, Pa.; and F. B. PARRIOTT AGENT; hereinafter styled

parties of the first part; and the TRANSCONTINENTAL OIL COMPANY, a corporation incorporated under the laws of the State of Delaware, hereinafter styled party of the second part, is as follows:

THAT the parties of the first part, at this date, are the legal owners and holders in fee simple title, in undivided interests, of those certain oil and gas leases, and leasehold estates for oil and gas on the hereinafter described lands, situated in Comanche County, Texas; and described as follows, to-wit:

(Description omitted).

WHEREAS, the above described leases and all rights thereunder or incident thereto, in so far as it affects the property above described and herein assigned, are now owned by the parties of the first part above named:

NOW, THEREFORE, for and in consideration of the sum of One Thousand Dollars ($1000.00) in hand paid, the receipt whereof is acknowledged and confessed; and certain other valuable considerations which are admitted and acknowledged to be sufficient by all parties, the receipt of which other considerations are hereby acknowledged; the undersigned, the present owners and holders of said above described leases and all rights thereunder or incident thereto, in so far as they affect the property herein described and herein assigned, we hereby grant, bargain, transfer, assign and convey, the said leasehold estates and all right, title, interest and estate of any and all character therein as held by the said parties of the first part, unto the TRANSCONTINENTAL OIL COMPANY, a corporation of the State of Delaware, in so far as the same pertains to the various tracts of land described in each and all of the foregoing leases and assignments; together with all wells, rigs, cas-

ing, pipe, boilers, engines, tanks, pumping stations, pipe lines, telephone lines, dwellings, warehouses, automobiles, trucks and all other equipment of whatsoever kind and character thereunto belonging, or used in connection with each and all of the above described leases.

TO HAVE AND TO HOLD the said leasehold estate in said premises above described unto the said Transcontinental Oil Company, its successors and assigns, together with said leaseholds and all title, interest, rights and privileges thereunto appertaining, subject to the terms, conditions and limitations of each respective original lease; and for the same consideration the undersigned each for himself and itself, and his and its heirs, successors, and representatives, do covenant with the said Assignee, its successor and assigns that said rights, interest and property are free and clear from all liens and encumbrances; and that all rentals and royalties due and payable thereunder have been duly paid.

Each party signing hereto, conveys by this assignment to the Grantee herein, all of his or its undivided right, title and interest in said leasehold estate as to each of said respective leases named above so that by the execution and delivery of this conveyance, the said Transcontinental Oil Company, *a corporation*, is vested with all of the right, title and interest of each of the Grantors hereto.

IN WITNESS WHEREOF, the undersigned owners and assignors have caused this instrument to be executed this 14th day of July, 1919; and the Tex-Penn Oil Company, a corporation, has caused the execution of this conveyance by proper resolution of its Board of Directors through its President, F. B. Parriott, duly attested by the Secretary

of said Corporation and the impress of the corporate seal; on the day and date last above written.

(s) W. E. WRATHER (SEAL)
(s) J. B. LANTZ (SEAL)
(s) J. L. KIRKLAND (SEAL)
(s) F. B. PARRIOTT (SEAL)
(s) F. B. PARRIOTT AGENT (SEAL)
TEX-PENN OIL COMPANY (SEAL)
TEX-PENN OIL COMPANY (SEAL)

(CORPORATE SEAL) By (s) F. B. PARRIOTT
President.

ATTEST:

J. B. LANTZ
Secretary.

(Acknowledgments and Recorder's certificate omitted.)

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## Petitioner's Exhibit No. 18.

THIS INDENTURE made this 30" day of July, 1919, between TEX-PENN OIL COMPANY, a corporation organized and existing under the laws of the State of West Virginia, hereinafter called "Tex-Penn Company," of the first part, and TRANSCONTINENTAL OIL COMPANY, a corporation organized and existing under the laws of the State of Delaware, hereinafter called "Transcontinental Company," of the second part,

WITNESSETH:

That the said Tex-Penn Company, for and in consideration, as well of the sum of One Thousand Dollars, lawful money of the United States of America to it well and truly paid by the Transcontinental Company, as of other good and valuable considerations, the receipt of all of which is hereby acknowledged, and in pursuance of due action of

its Board of Directors and Stockholders, hereby sells, assigns, transfers and conveys to the Transcontinental Company, its successors and assigns, all and singular the whole of the property, assets, business and good-will of the Tex-Penn Company, of whatsoever nature and wheresoever situate; INCLUDING all oil and gas leases and leasehold estates for oil and gas, refineries, storage tanks, warehouses, buildings, structures and improvements, machinery and equipment, pipe lines, tank cars, wells, rigs, casing, pipe, boilers, engines, pumping stations, telephone lines, automobiles, trucks and other equipment, patents and patent rights and licenses, leases, easements, contracts, rights, privileges and immunities;

TO HAVE AND TO HOLD the said property, assets, business and good-will unto the said Transcontinental Company, its successors and assigns.

AND the Tex-Penn Company covenants with the Transcontinental Company that it, the said Tex-Penn Company at any time and from time to time, upon the request and at the charge of the Transcontinental Company, will make, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, and assurances as may be reasonably required for the better assuring to the Transcontinental Company, its successors and assigns, of all and singular the premises hereby sold, assigned, transferred and conveyed or intended so to be.

IN WITNESS WHEREOF the TEX-PENN OIL COMPANY has caused these presents to be signed in its corporate name by its President and its corporate seal to be hereunto affixed by its Secretary, the day and year first aforesaid.

(s) TEX-PENN OIL CO.
TEX-PENN OIL COMPANY.
(s) F. B. PARRIOTT
President

*Petitioner's Exhibit No. 18.*

(CORPORATE SEAL)

Signed, Sealed and
Delivered in the Presence of

(s) M. L. NEWELL.

Attest:

(s) S. E. DRUM
Asst. Secretary.

*(Acknowledgment omitted.)*

## Petitioner's Exhibit No. 19.

(Sometimes also referred to as Petitioner's Exhibit Holliday No. 1.)

AGREEMENT made this 24th day of July, 1919, between M. L. BENEDUM and F. B. PARRIOTT, of Pittsburgh, Pennsylvania, parties of the first part, and J. M. HOLLIDAY, of the same place, party of the second part.

WHEREAS, a corporation is being organized under the laws of the State of Delaware, under the name of Transcontinental Oil Company, for the purpose of acquiring, owning, developing and operating the oil fields, wells, refineries, pipe lines, tank cars, distributing stations, etc., now owned and conducted by various corporations and individuals, so that said oil company will represent a reorganization and consolidation of the assets and businesses of said corporations and individuals;

AND WHEREAS, the party of the second part is arranging to acquire the various properties and assets, for the

acquisition of which said Transcontinental Oil Company is being organized, with a view to transferring said properties and assets, or causing them to be transferred, to said corporation, in consideration of certain cash and 1,250,000 shares of the stock of said corporation without nominal or par value, which cash and stock are to be used by the party of the second part to acquire said properties and assets;

AND WHEREAS, the parties of the first part own jointly nine-sixteenths (9/16ths) of a five-eighths (5/8ths) working interest in certain oil leases on tracts of developed oil lands in Comanche county, Texas, known as the "Duke-Knoles Pool," a schedule of which leases is attached hereto, marked "Schedule A"; and also own jointly all of the outstanding shares of the capital stock of the Tex-Penn Oil Company, a West Virginia corporation;

AND WHEREAS, the parties of the first part have agreed that they will transfer or cause to be transferred to the Transcontinental Oil Company the rights and interests hereinafter mentioned for the various considerations hereinafter set forth, from the net result of which the first parties will ultimately receive $3,400,000. in cash and a majority of the shares of the capital stock of the Trans continental Oil Company, viz. 1,007,834 shares out of a total of 2,000,000 shares of the capital stock of said company, without nominal or par value;

NOW THEREFORE THIS AGREEMENT WITNESSETH, that, for and in consideration of the premises and of the considerations, terms and conditions hereinafter set forth, the parties hereto have agreed and do agree as follows:

1. The parties of the first part will transfer to the Transcontinental Oil Company all their right, title and interest in and to the leases enumerated in the schedule here-

to attached, marked "Schedule A," in the so-called "Duke-Knoles Pool," for and in consideration of the sum of Three Million Four Hundred Thousand Dollars ($3,400,000) in cash, and the party of the second part will, upon the transfer of such right, title and interest to said corporation, pay or cause to be paid said cash to the parties of the first part.

2. The parties of the first part will cause the Tex-Penn Oil Company to agree to transfer and to transfer to the Transcontinental Oil Company all of its property and assets for and in consideration of Three Hundred and Fifty Thousand Dollars ($350,000) in cash and One Million Seven Thousand Eight Hundred and Thirty-four (1,007,834) shares of the capital stock of the Transcontinental Oil Company, and the party of the second part will, upon the transfer of such property and assets, pay or cause to be paid to said Tex-Penn Oil Company said cash and said shares.

The Tex-Penn Oil Company is to receive credit for the oil on hand as of July 1st, 1919 and the cash and equivalent items and accounts and bills receivable as of that date, and it will pay all obligations arising out of its operations of its interest in the "Duke-Knoles Pool." Furthermore the Transcontinental Oil Company will take over at cost price material and equipment delivered on and after July 1st, 1919.

3. The parties of the first part will cause the owners of the outstanding seven-sixteenths (7/16th) of a five-eighths (5/8ths) working interest in the oil leases on tracts of developed oil lands in Comanche county, Texas, known as the "Duke-Knoles Pool," enumerated in "Schedule A" hereto attached, to transfer to the Transcontinental Oil Company all of their said seven-sixteenths (7/16ths) of said five-eighths (5/8ths) working interest for a con-

sideration of Five Million Two Hundred and Fifty Thousand Dollars ($5,250,000) cash, and the party of the second part will, upon the transfer of such right, title and interest, pay to said owners said cash consideration.

4. This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective executors, administrators and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

M. L. BENEDUM (SEAL)
F. B. PARRIOTT (SEAL)
J. M. HOLLIDAY (SEAL)

Witness
GEORGE J. WOLF

(*Attached schedule of leases omitted.*)

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## Petitioner's Exhibit No. 20.

(Sometimes also referred to as Petitioner's Exhibit Holliday No. 2.)

Pittsburgh, Pa., July 24th, 1919.

M. L. Benedum
and
F. B. Parriott,
Pittsburgh, Pa.

Gentlemen:

Referring to the agreement between us of this date herewith, in which you undertake to transfer, or cause to be transferred, to the Transcontinental Oil Company all of

your right, title and interest in and to the leases in the "Duke-Knoles Pool" and all of the property and assets of the Tex-Penn Oil Company, in which you own the entire Capital Stock, for an aggregate consideration of 1,007,834 shares of the stock of the Transcontinental Oil Company and $3,400,000 in cash, I beg to state and confirm our agreement that you will also cause the holders of the outstanding seven-sixteenths (7/16ths) of the Five-eighths (5/8ths) working interest in the leases in the "Duke-Knoles Pool" to transfer their interests to the Transcontinental Oil Company in consideration of $5,250,000 in cash.

Please confirm this understanding.

Very truly yours,

(s) J. M. HOLLIDAY

Accepted:

(s) M. L. BENEDUM

(s) F. B. PARRIOTT

---

**Petitioner's Exhibit No. 21.**

E. W. CLARK & CO.
Philadelphia

PRICHITT & CO.
New York

June 19, 1919.

CONFIDENTIAL

TRANSCONTINENTAL OIL COMPANY

Messrs. .....

.....

DEAR SIRS:

A corporation of the above name is about to be organized under the laws of the State of Delaware, with an au-

thorized capitalization consisting of 2,000,000 shares without nominal or par value, all common stock. It will take over the property, assets and effects of Tex-Penn Oil Company, a West Virginia corporation; Pittsburgh-Texas Oil and Gas Company, a West Virginia Corporation; Riverside-Eastern Oil Company, a Delaware corporation, and Riverside-Western Oil Company, a West Virginia corporation, together with the good-will thereof as going concerns, the whole comprising a complete oil property including production, refining and distribution. The company will have no preferred stock, or mortgage or funded indebtedness.

Subject to the approval of our counsel as to the legality of the organization of the said company and the issuance of its shares, and subject to the adjustment of other conditions satisfactorily to us, we have contracted to purchase stock of the said company, and are forming a Syndicate of which we are to be the sole Managers, and in which we are to participate to purchase from ourselves and others 500,000 shares of the said stock "if, as and when" issued, delivered to and accepted by us, for the sum of $40. per share, and to market the same. At this price the transaction will yield us a profit for originating the business. The entire net proceeds of the sale of such stock will be paid into the treasury of the company for the acquirement of properties and to provide working capital.

The date and terms of public offering will be announced in the near future.

Each Subscriber shall from time to time make payments upon our call as Managers, without reference to the receipt or possession by us or by the Subscribers of any of said shares of stock, and shall in all respects execute and carry out the undertakings and agreements entered into or which may hereafter be entered into by the Managers for the purchase and acquirement of any such stock, and the undertakings herein expressed.

*Petitioner's Exhibit No. 21.*

As Syndicate Managers we are to be vested with full power and authority to sell and transfer any of the shares of the stock of the company received by us or the contracts we have made for the purchase thereof, at such prices and upon such terms and conditions as in the exercise of our uncontrolled discretion we shall deem for the best interest of the Syndicate, and as well, to purchase, sell, repurchase and resell, at private sale or public auction, in the open market or at any other time or place, as often as we may deem feasible, for the account of the Syndicate, any of such shares of stock; to carry on dealings and transactions in the stock of the company; and generally to do any and all acts and things, and enter into and execute such agreements or other instruments as we may, in our uncontrolled discretion, deem proper and expedient in the premises to carry out and perform this agreement, including the right to borrow money on behalf of the Syndicate, and to pledge therefor all or any part of the obligations of the Subscribers, and all or any part of the stock of the company and any other Syndicate assets then in our possession or control, as collateral therefor.

The Syndicate is to continue until October 18th, 1919, unless sooner terminated by us, (which we may do at any time) with the option to us in our uncontrolled discretion to extend the same for a further period of ninety days.

As Managers we are to have the right, if we deem it expedient so to do, to deliver to any Subscriber in payment or partial payment and discharge of his interest in the Syndicate, certificates of stock of the company upon payment of his *pro rata* share of the expenses of the Syndicate. At any time that we distribute to any Subscriber shares of stock of the company, the certificates so acquired by the Subscriber shall, until the termination of the Syndicate, be held by him subject to our control as Managers, and be returned to us upon demand or upon our order for sale on Syndicate account. Any Subscriber who disposes of

any stock delivered to him in violation of this agreement hereby assumes to re-purchase from us as Managers the stock so sold by him at the price which we may have paid therefor in behalf of the Syndicate if we shall have become the purchasers thereof for Syndicate account.

We may also permit any Subscriber to withdraw from sale any certificates of stock upon like condition and upon the payment of his *pro rata* share of such expenses hereinafter mentioned.

No enumeration of any particular powers or authority vested in us as Managers herein shall be deemed in anywise to limit the general powers conferred upon us as such Managers, or our right to exercise our uncontrolled judgment and discretion in any connection for the operations of the Syndicate.

We are to reimburse ourselves for all counsel fees, commissions, interest charges, brokerage and other expenses heretofore or hereafter incurred in the purchase, acquirement or marketing of the shares of stock involved in the Syndicate, and at the termination of this Syndicate shall account to the Subscribers, and the net profits of the Syndicate and the number of shares of stock of the company then remaining in our hands, if any, after paying all expenses shall be divided among the Subscribers *pro rata* in the proportion that their several subscriptions shall bear to the aggregate Syndicate Subscriptions, and the losses of the Syndicate shall be borne by the Subscribers in like proportion.

Each Subscriber agrees to be bound by any action of the Syndicate Managers, but shall be liable only to the extent of his individual participation in the Syndicate.

Failure of any Subscriber to perform shall not affect or release any other Subscriber, but in such case, or in the event of the release of any Subscriber by the Managers, they may receive other Subscribers to take the place of those released or failing to perform, and may also exclude

*Petitioner's Exhibit No. 21.*

from further interest and participation in the Syndicate, and declare forfeited any payments theretofore made by a defaulting Subscriber.

The Subscribers shall not be construed to be co-partners with the Syndicate Managers or with one another, nor liable to contribute more than their ratable amount as herein provided. Each Subscriber shall furnish an address to the Managers, and any notice required to be given hereunder shall be sufficient if mailed to the Subscriber at the address so furnished.

We are to make no charge for our services as Syndicate Managers, but are to have the right to pay such commissions to Syndicate members or brokers for effecting sales or purchases for the account of the Syndicate as we deem proper, and to charge the Syndicate the usual brokers' commissions for sales or purchases effected by us.

No assignment by any Subscriber of his interest in the Syndicate shall release such member from his liability as a Syndicate participant unless the assignment is assented to in writing by the Syndicate Managers, nor shall withdrawals be allowed without written consent of the Syndicate Managers.

This Syndicate Agreement is to bind and benefit ratably according to the amount of their subscriptions the parties hereto and their respective successors, survivors and personal representatives.

Either firm of Managers may act as a co-partnership, and all rights hereunder conferred upon either of us shall vest in any co-partnership which shall be the successor of either of our present co-partnerships without any further act of assignment. We shall not be liable for the form or validity of such stock nor for anything except bad faith.

We have allotted you a participation of shares in the above Syndicate which, at the Syndicate price of $40. per share, amounts to $

*Petitioner's Exhibit No. 21.*

Kindly sign the enclosed duplicate original hereof and return the same promptly to either of the undersigned, and thereupon this letter and the duplicate original thereof so signed by you, together with similar letters and duplicate originals thereof signed by the other Syndicate participants, shall constitute the Syndicate Agreement.

Yours very truly,

Syndicate Managers.

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**Petitioner's Exhibit No. 22.**

E. W. CLARK & CO.
Philadelphia

PRICHITT & CO.
New York

TRANSCONTINENTAL OIL COMPANY
(Stock Syndicate)

New York, October 17, 1919.

DEAR SIR:

We beg to notify you that approximately 80% of the 500,000 shares comprising the above Syndicate have been disposed of at a substantial profit.

Negotiations have been under way and are now actively pending, which in our judgment warrant the belief that we will be able to dispose of a substantial block of the syndicate's remaining shares at higher prices than are now current.

In accordance with the provisions of the Syndicate agreement, we do hereby extend said Syndicate for the period of 90 days from October 18th, 1919.

Yours very truly,

E. W. CLARK & CO.
PRICHITT & CO.
Syndicate Managers.

## Petitioner's Exhibit No. 23.

PRIVATE AND
CONFIDENTIAL

TRANSCONTINENTAL OIL COMPANY
STOCK SYNDICATE

New York, January 8, 1920.

DEAR SIR:

The above Syndicate has been closed and terminated on and as of this date.

Against your participation and in full and complete settlement of your interest in the foregoing Syndicate, you will be entitled to receive.....shares of the stock of the Company against payment by you of $.....per share, amounting in the aggregate to $.....

Kindly make payment of the said sum of $.....in current New York funds to either of the undersigned at their respective offices at or before noon on January 12th, 1920, against which payment certificates of stock will be duly delivered.

Very truly yours,

E. W. CLARK & CO.
PRICHITT & CO.
Syndicate Managers

By.....
Agent

---

## Petitioner's Exhibit No. 24.

Ledger sheet of Central Union Trust Company, Transfer Agent of Transcontinental Oil Company, showing transfers of Transcontinental stock registered in the names of M. L. Benedum and F. B. Parriott.

(Substance recited in statement of evidence; see page 644, *ante*.)

## Petitioner's Exhibit No. 25.

Pittsburgh, Penn'a,
July 29th, 1919.

Central Union Trust Co. of N. Y.
80 Broadway,
New York City.

Guaranty Trust Co. of N. Y.
140 Broadway,
New York City.

Gentlemen:

Referring to the letter of the Company to you of even date herewith, regarding the issuance of One Million Two Hundred Seven Thousand Eight hundred thirty-four (1,207,834) shares of the Capital Stock of this Company, will you kindly issue the following certificates made out as follows, and deliver the same to me in accordance with the terms of said letter:

(1) A certificate, or certificates, in the joint names of M. L. Benedum and F. B. Parriott for 500,000 shares.

(2) A certificate, or certificates in the joint names of M. L. Benedum and F. B. Parriott for 507,834 shares.

Yours very truly,

TRANSCONTINENTAL OIL COMPANY
(s) S. A. McCASKEY
Secretary.

All alterations on this document are authorized in regular form.

(s) S. A. McCASKEY
Secy.

## Petitioner's Exhibit No. 26.

Entry appearing upon F. B. Parriott, Attorney, Journal page 7:

DECEMBER 31, 1919

| | | | | |
|---|---|---|---|---|
| 20 | W. E. Wrather | Tex-Penn Exp..... | 35 861 40 | |
| 22 | J. B. Lantz | Tex-Penn Exp..... | 35 861 40 | |
| 24 | J. L. Kirkland | Tex-Penn Exp..... | 53 792 10 | |
| 26 | F. B. Parriott | Tex-Penn Exp..... | 53 792 11 | |
| 28 | F. B. Parriott | Spec. Tex-Penn Exp..... | 107 584 28 | |
| 30 | Tex-Penn Oil Co. Indebtedness Fund..... | | | 286 891 29 |

By ½ of ⅝ of income from crude oil and gas sales from Duke-Knoles Pool for period from Jan. 1–1919 to June 30–1919 to be available for Tex-Penn Oil Co. to extent needed in paying off their debts. Balance, if any, to be distributed to F. B. Parriott and others all in conformity with contract of 10/31/18 between F. B. Parriott & others and the Tex-Penn Oil Co.

* * * * * *

Entry appearing upon F. B. Parriott, Attorney, Journal page 8:

DECEMBER 31, 1919

| | | | | |
|---|---|---|---|---|
| 30 | Tex-Penn Indebtedness Fund..... | | 55 255 24 | |
| 20 | WEW | Tex-Penn Expense..... | | 6 906 90 |
| 22 | JBL | " " ..... | | 6 906 90 |
| 24 | JLK | " " ..... | | 10 360 35 |
| 26 | F.B.P. | " " ..... | | 10 360 36 |
| 28 | F.B.P. spec. | " " ..... | | 20 720 73 |

To distribute unused Balance in Tex-Penn Ind. Fund

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## Petitioner's Exhibit No. 27.

General Deed for South American properties of Tex-Penn to Transcontinental Oil Company, dated July 30, 1919.

(Substance recited in statement of evidence; see page 733, *ante.*)

## Petitioner's Exhibit No. 28.

Deed conveying Sutton County lease of Tex-Penn to Transcontinental Oil Company, dated July 30, 1919.

(Substance recited in statement of evidence; see page 734, *ante.*)

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## Petitioner's Exhibit No. 29.

Deed conveying Oldham County properties from Tex-Penn to Transcontinental Oil Company, dated July 30, 1919.

(Substance recited in statement of evidence; see page 735, *ante.*)

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## Petitioner's Exhibit Holliday No. 1.

Agreement dated July 24, 1919, between M. L. Benedum and F. B. Parriott, parties of the first part, and J. M. Holliday, party of the second part.

(This exhibit is the same as Petitioner's Exhibit No. 19, printed herein at page 1818, *ante.*)

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## Petitioner's Exhibit Holliday No. 2.

Letter of July 24, 1919, addressed to M. L. Benedum and F. B. Parriott, and signed J. M. Holliday.

(This exhibit is the same as Petitioner's Exhibit No. 20, printed herein at page 1821, *ante.*)

## Petitioner's Exhibit Holliday No. 3.

Pittsburgh, Pa., July 24, 1919

Tex-Penn Oil Company,
Benedum-Trees Bldg.,
Pittsburgh, Pa.

Gentlemen:

A corporation, named "Transcontinental Oil Company" is being organized under the laws of Delaware, for the purpose of acquiring and operating properties and assets of several corporations and individuals, so that the new corporation will represent a consolidation of such properties. Pending the organization of said corporation, I have been arranging to acquire and transfer, or cause to be transferred, to the new corporation when organized, the various properties and businesses that such corporation is being organized to acquire. To this end, I hereby offer to purchase all of the properties and assets of the Tex-Penn Oil Company for a consideration of Three Hundred and Fifty Thousand Dollars ($350,000) Dollars in cash and one Million Seven Thousand Eight Hundred and Thirty-four (1,007,834) shares of the capital stock of the Transcontinental Oil Company, without nominal or par value, to be issued to your company or to your nominees, full paid and non-assessable.

It is a condition of this offer that the property and assets to be conveyed by your company will include, among other things, assignments of leases upon approximately thirty-three thousand (33,000) acres of oil lands in Sutton and Oldham counties, Texas, which you have recently acquired from M. L. Benedum and F. B. Parriott, and also all your right, title and interest in and to an agreement dated June 24, 1919, between Messrs. Benedum and Parriott, of one part, and Mr. J. W. Leonard and L. Restrepo, of the other part, which agreement, I understand, has been assigned to you by Messrs Benedum and Parriott, for the

*Petitioner's Exhibit Holliday No. 3.*

acquisition of a four-fifths (4/5) interest, to be taken over in corporate form, in and to lands or oil leases on lands aggregating approximately eight hundred thousand (800,000) acres of land in the Republic of Columbia.

The Tex-Penn Oil Company is to receive credit for the oil on hand as of July 1st, 1919, and the cash and equivalent items and accounts and bills receivable as of that date, and it will pay all obligations arising out of its operation of its interest in the "Duke-Knoles Pool." Furthermore the Transcontinental Oil Company will take over at cost price material and equipment delivered on and after July 1st, 1919.

Yours very truly,

J. M. HOLLIDAY

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**Petitioner's Exhibit Holliday No. 4.**

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE TEX-PENN OIL COMPANY.

A special meeting of the Board of Directors of the Tex-Penn Oil Company was held at the office of the company, in the Benedum-Trees Building, Pittsburgh, Pa., on the 25th day of July, 1919, at 2 o'clock P. M., pursuant to a call and waiver of notice signed by all of the Directors of the Company as follows:

TEX-PENN OIL COMPANY

CALL AND WAIVER OF NOTICE OF DIRECTORS' MEETING

We, the undersigned, being all of the Directors of the Tex-Penn Oil Company, hereby call a special meeting of the directors of said corporation, to be held at the office of the company, in the Benedum-Trees Building, Pittsburgh, Pa., on July 25, 1919, at 2 o'clock P. M., for the purpose of

receiving and acting upon a proposition to sell all of the property and assets of this company and for the transaction of such other business as may come before the meeting. We hereby waive all requirements, statutory or otherwise, for notice of said meeting.

GEORGE J. WOLF
F. B. PARRIOTT
E. D. ROBINSON
C. F. EHRENTRAUT
S. E. DRUM

There were present George J. Wolf, E. D. Robinson, C. F. Ehrentraut, and S. E. Drum, being a majority of the members of the Board.

In the absence of the President, Mr. Parriott, Mr. Wolf, the Vice-President, presided, and Mr. E. D. Robinson acted as Secretary.

The Secretary presented and read to the meeting a letter from Mr. J. M. Holliday, which letter was, by motion duly seconded and carried, ordered spread upon the records of the meeting, which is accordingly done as follows:

(The letter, dated July 24, 1919, is here omitted, being the same as Petitioner's Exhibit Holliday No. 3 next preceding.)

After consideration of the foregoing offer, it was, upon motion duly made and seconded, unanimously

RESOLVED, that the offer of Mr. J. M. Holliday contained in the letter be submitted to and spread upon the minutes of this meeting, to purchase all of the properties and assets of this company for three hundred and fifty thousand dollars ($350,000) cash and one million seven thousand eight hundred and thirty-four (1,007,834) shares of stock of the Transcontinental Oil Company, without nominal or par value, full paid and non-assessable, be and the same is hereby accepted, and the officers of this company be, and they

*Petitioner's Exhibit Holliday No. 4.*

are authorized and directed to execute for and in the name of this company, and as its act and deed, all deeds, assignments, bills of sale, and other instruments of transfer, as may be necessary or proper to fully transfer and convey to said J. M. Holliday, or his nominee, all of the property and assets of this company, upon the terms and conditions set forth in the offer of J. M. Holliday aforesaid, and to take all such further action as may be necessary or convenient to fully carry out the terms and purpose of this resolution.

RESOLVED FURTHER, that upon the transfer of all the property and assets to J. M. Holliday, or his nominee, and upon the collection of all amounts due this company as of July 1, 1919, and upon the payment of all debts owing by this company, this company shall be dissolved and its assets distributed among its stockholders, and that to facilitate this, the proper officers of this company be and they hereby are authorized and directed to notify and direct Mr. Holliday that the three hundred and fifty thousand dollars ($350,000) cash payable to this company, in accordance with Mr. Holliday's offer, shall be paid to the treasury of this company, and that the one million seven thousand eight hundred and thirty-four (1,007,834) shares of stock of the Transcontinental Oil Company, deliverable to this company under said offer, shall be issued and delivered to M. L. Benedum and F. B. Parriott, jointly, they being the joint owners of all the capital stock of this company issued and outstanding.

On motion the meeting adjourned.

E. D. ROBINSON
Secretary.

## Petitioner's Exhibit Holliday No. 5.

To the Board of Directors,
Riverside Eastern Oil Co.,
Pittsburgh, Pa.

Gentlemen:

I beg to advise that there is now in the course of formation and organization under the laws of Delaware, a certain corporation having the name TRANSCONTINENTAL OIL COMPANY, or such other suitable name as may be determined upon, with an authorized capital stock of Two Million (2,000,000) shares, without nominal or par value, which corporation it is intended will offer to purchase either for cash or for shares of stock of the said corporation, or both, among other things, certain oil and gas producing properties and undeveloped acreage, and certain refineries and gasoline plants now owned and operated by several other corporations and individuals in several states in the United States and in foreign countries.

Among the properties considered to be desirable for purchase by the new corporation are the operating properties of Riverside Eastern Oil Company, your corporation.

Accordingly, on behalf of the new corporation, I am authorized to offer the following proposal,—That upon the execution and delivery of proper deeds, bills of sale, or other written instruments of transfer, selling and transferring all real estate, leases, gasoline plants, blending plants, pipe lines, rolling stock, and operating property of every kind, by the title and interest under which such are now held, including good will, and including the property and rights of subsidiary corporations, or the stocks thereof, as may later be agreed upon between us, but exclusive of all moneys, Bills Receivable, and Accounts Receivable of your corporation, or of its subsidiary corporations, I will pay, or cause to be paid, the sum of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000.00) in cash, and will deliver or cause to be delivered

to your corporation, or its nominees or assigns, Forty-one Thousand Six Hundred and Sixty-six (41,666) shares of the capital stock of Transcontinental Oil Company, which stock shall be without nominal or par value, but shall be issued fully paid and non-assessable. If this proposal be accepted pursuant to proper corporate action had by the stockholders and the Directors and Officers of the Riverside Eastern Oil Company, I will be prepared to close all matters and settlements involved hereunder on the 15th day of July, 1919, or if such date affords insufficient time, such reasonably immediate date thereafter, to be fixed by five days' written notice by either of us to the other of readiness to close, as will properly allow for preparation of transfers.

In the event that this proposal meets with proper corporate approval and acceptance at the hands of Riverside Eastern Oil Company, I am to be advised of such approval in writing, and supplied with certified copies of the minutes of all corporate action, within five (5) days thereafter.

Yours very truly,

J. M. HOLLIDAY.

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**Petitioner's Exhibit Holliday No. 6.**

June 18, 1919.

To the Board of Directors,
Riverside Western Oil Co.,
Pittsburgh, Pa.

Gentlemen:

I beg to advise that there is now in the course of formation and organization under the laws of Delaware, a certain corporation having the name TRANSCONTINENTAL OIL COMPANY, or such other suitable name as may be deter-

*Petitioner's Exhibit Holliday No. 6.*

mined upon, with an authorized capital stock of Two Million (2,000,000) shares, without nominal or par value, which corporation it is intended will offer to purchase either for cash or for shares of stock of the said corporation, or both, among other things, certain oil and gas producing properties and undeveloped acreage, and certain refineries and gasoline plants now owned and operated by several other corporations and individuals in several states in the United States and in foreign countries.

Among the properties considered to be desirable for purchase by the new corporation are the operating properties of Riverside Western Oil Company, your corporation.

Accordingly, on behalf of the new corporation, I am authorized to offer the following proposal,—That upon the execution and delivery of proper deeds, bills of sale, or other written instruments of transfer, selling and transferring all real estate, leases, gasoline plants, blending plants, pipe lines, rolling stock, and operating property of every kind, by the title and interest under which such are now held, including good will, and including the property and rights of subsidiary corporations, or the stocks thereof, as may later be agreed upon between us, but exclusive of all moneys, Bills Receivable and Accounts Receivable of your corporation, or of its subsidiary corporations, I will pay or cause to be paid the sum of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000.00) in cash, and will deliver or cause to be delivered to your corporation, or its nominees or assigns, Forty-one Thousand and Six Hundred and Sixty-Seven (41,667) shares of the capital stock of Transcontinental Oil Company, which stock shall be without nominal or par value, but shall be issued fully paid and non-assessable. If this proposal be accepted pursuant to proper corporate action had by the stockholders and the Directors and Officers of the Riverside Western Oil Company, I will be prepared to close all matters and

*Petitioner's Exhibit Holliday No. 6.*

settlements involved hereunder on the 15th day of July, 1919, or if such date affords insufficient time, such reasonably immediate date thereafter, to be fixed by five days' written notice by either of us to the other of readiness to close, as will properly allow for preparation of transfers.

In the event that this proposal meets with proper corporate approval and acceptance at the hands of Riverside Western Oil Company, I am to be advised of such approval in writing, and supplied with certified copies of the minutes of all corporate action, within five (5) days thereafter.

Yours very truly,

J. M. HOLLIDAY.

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**Petitioner's Exhibit Holliday No. 7.**

To the Board of Directors,
Pittsburgh Texas Oil & Gas Company,
Pittsburgh, Pa.

Gentlemen:

I beg to advise that there is now in the course of formation and organization under the laws of Delaware, a certain corporation having the name TRANSCONTINENTAL OIL COMPANY, or such other suitable name as may be determined upon, with an authorized capital stock of Two Million (2,000,000) shares, without nominal or par value, which corporation it is intended will offer to purchase either for cash or for shares of stock of the said corporation, or both, among other things, certain oil and gas producing properties and undeveloped acreage, and certain refineries and gasoline plants now owned and operated by several other corporations and individuals in several states in the United States and in foreign countries.

*Petitioner's Exhibit Holliday No. 7.*

Among the things which the said new corporation desire to purchase for its purposes are all the property and assets of the Pittsburgh-Texas Oil & Gas Company, your corporation.

Accordingly, on behalf of the said new corporation, I am authorized to make and submit the following proposition, that is to say: That upon the execution and delivery of proper deeds, bills of sale or other written instruments of transfer, selling and transferring all real estate, refinery, leases, gasoline plants, blending plants, pipe lines, rolling stock, wells, operating properties and assets of every kind and nature, by the title and interest under which such are now held, including business good will, I will deliver or cause to be delivered to your corporation or its nominees or assigns, one hundred and fifty-eight thousand eight hundred and thirty-three shares of the Capital stock of the said Transcontinental Oil Company, which said stock shall be without nominal or par value but shall be fully paid and non-assessable and so issued.

Furthermore the said Transcontinental Oil Company shall as a part of the consideration for the conveyance to it of the property and assets of your said Pittsburgh-Texas Oil & Gas Company as aforesaid assume and agree to pay and satisfy from time to time and when and as soon as the same become due and payable each and every debt and liability of your said Company, now existing and those that may exist at the date of the said conveyance, shown by the records of the Company and admitted by the Company to be its valid obligation.

If this proposition be accepted pursuant to proper corporate action on the part of your said Company, I will be prepared to close all matters involved in this proposition on the 15th day of July, 1919, or if such date afford insufficient time, such reasonably immediate date thereafter to be fixed by five days' written notice by either of us to the other of readiness to close, as will properly allow for preparation of conveyances.

*Petitioner's Exhibit Holliday No. 7.*

In the event that this proposition meets with your approval and acceptance on the part of the said Pittsburgh-Texas Oil & Gas Company, I am to be advised of such approval in writing and supplied with certified copies of the minutes of all corporate action within five days thereafter.

Respectfully submitted,

J. M. HOLLIDAY.

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**Petitioner's Exhibit Holliday No. 8.**

Pittsburgh, Pa., July 24th, 1919.

Transcontinental Oil Company,
Benedum-Trees Building,
Pittsburgh, Pennsylvania.

Gentlemen:

Pending the incorporation and organization of the Transcontinental Oil Company and on its behalf, I have arranged to acquire and to transfer, or to cause to be transferred, to your company, the various properties for the acquisition of which your company was organized. These properties are described in the letter written to Messrs. Prichitt & Co. of N. Y. on June 17th, 1919 by Mr. F. B. Parriott.

The properties enumerated in Mr. Parriott's letter includes all of the property and assets of the Pittsburgh-Texas Oil & Gas Company, the Riverside Western Oil Company, the Riverside Eastern Oil Company and the Tex-Penn Oil Company.

All of the property of the Pittsburgh-Texas Oil & Gas Company is to be transferred to your company as a going concern as of the first day of May, 1919, on which date the

*Petitioner's Exhibit Holliday No. 8.*

company had approximately $500,000.00 cash in its treasury. It is understood that all of the company's transactions since that date have been made on behalf of your company and that the same is taken over subject to such changes in its balance sheet as have been occasioned in the regular course of business since that date. Your company is to assume all contracts and obligations of the Pittsburgh-Texas Oil & Gas Company, and I enclose herewith a draft of an undertaking to be executed by your company evidencing such assumption.

The properties of the Tex-Penn Oil Company include, among other things, leases on approximately 33,000 acres of land in Sutton and Oldham Counties, Texas, which were not included in the description contained in Mr. Parriott's letter of June 17th; also all of the right, title and interest of the Tex-Penn Oil Company in a contract for options and leases, and in some instances the fee, to an extensive acreage in South America, approximating upwards of 800,000 acres, subject to royalties reserved to the owners of these lands. The beneficial interests in these South American Properties, in their entirety, is to be turned over to your Company, either directly or through subsidiaries to be organized for the purpose, subject to an interest, by way of compensation to the Agents who procured the same, which is not to exceed one-fifth (1/5th). The properties and assets of the Tex-Penn Company are to be transferred to your Company upon the principle that since July 1st, 1919, that Company's business has been conducted for the account of your Company, the Tex-Penn Oil Co. to receive credit for the oil on hand as of that date and the cash items and accounts and bills receivable as of that date and its properties to be transferred to you free of debt.

As to the two Riverside Companies, their properties are to be conveyed as of August 1st, 1919, exclusive, however, of cash on hand, bills and accounts receivable, obligations, and exclusive also of the saleable supplies on hand as of that date. The affairs of the subsidiary companies

of the two Riverside Companies will be similarly adjusted and the property and assets of these subsidiary companies will be taken over by your Company either by direct transfer or a transfer of their Capital Stock.

I offer to transfer, or cause to be transferred, all of the foregoing properties to your Company for Eleven Million Five Hundred Thousand ($11,500,000) Dollars cash and One Million Two Hundred Fifty Thousand (1,250,000) shares of the Common capital stock of the Transcontinental Oil Company, without nominal or par value, said stock to be full paid stock and not liable to any further call or assessment thereon.

Yours very truly,

(s) J. M. HOLLIDAY
J. M. HOLLIDAY

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**Petitioner's Exhibit Holliday No. 9.**

(*Excerpt from Minutes of Transcontinental Directors' Meeting, July 25, 1919.*)

The Secretary presented and read to the meeting, letter dated July 24th, 1919 from Mr. J. M. Holliday of Pittsburgh, Pa., to this Company.

Upon motion, duly made and seconded, it was directed that the letter be spread in full upon the minutes of this meeting, which is accordingly done as follows:

Pittsburgh, Pa., July 24th, 1919.

Transcontinental Oil Company,
Benedum-Trees Building,
Pittsburgh, Pennsylvania.

Gentlemen:

Pending the incorporation and organization of the Transcontinental Oil Company and on its be-

half, I have arranged to acquire and to transfer, or to cause to be transferred, to your company, the various properties for the acquisition of which your company was organized. These properties are described in the letter written to Messrs. Prichitt & Co. of N. Y. on June 17th, 1919 by Mr. F. B. Parriott.

The properties enumerated in Mr. Parriott's letter includes all of the property and assets of the Pittsburgh-Texas Oil & Gas Company, the Riverside Western Oil Company, the Riverside Eastern Oil Company and the Tex-Penn Oil Company.

All of the property of the Pittsburgh-Texas Oil & Gas Company is to be transferred to your company as a going concern as of the first day of May, 1919, on which date the company had approximately $500,000.00 cash in its treasury. It is understood that all of the company's transactions since that date have been made on behalf of your company and that the same is taken over subject to such changes in its balance sheet as have been occasioned in the regular course of business since that date. Your company is to assume all contracts and obligations of the Pittsburgh-Texas Oil & Gas Company, and I enclose herewith a draft of an undertaking to be executed by your company evidencing such assumption.

The properties of the Tex-Penn Oil Company include, among other things, leases on approximately 33,000 acres of land in Sutton and Oldham Counties, Texas, which were not included in the description contained in Mr. Parriott's letter of June 17th; also all of the right, title and interest of the Tex-Penn Oil Company in a contract for options and leases, and in some instances the fee, to an exten-

sive acreage in South America, approximating upwards of 800,000 acres, subject to royalties reserved to the owners of these lands. The beneficial interests in these South American Properties, in their entirety, is to be turned over to your Company, either directly or through subsidiaries to be organized for the purpose, subject to an interest, by way of compensation to the Agents who procured the same, which is not to exceed one-fifth (1/5th). The properties and assets of the Tex-Penn Company are to be transferred to your Company upon the principle that since July 1st, 1919, that Company's business has been conducted for the account of your Company, the Tex-Penn Oil Co. to receive credit for the oil on hand as of that date and the cash items and accounts and bills receivable as of that date and its properties to be transferred to you free of debt.

As to the two Riverside Companies, their properties are to be conveyed as of August 1st, 1919, exclusive, however, of cash on hand, bills and accounts receivable, obligations, and exclusive also of the saleable supplies on hand as of that date. The affairs of the subsidiary companies of the two Riverside Companies will be similarly adjusted and the property and assets of these subsidiary companies will be taken over by your Company either by direct transfer or a transfer of their Capital Stock.

I offer to transfer, or cause to be transferred, all of the foregoing properties to your Company for Eleven Million Five Hundred Thousand ($11,500,000.00) Dollars cash and One Million Two Hundred Fifty Thousand (1,250,000) shares of the Common capital stock of the Transcontinental Oil Company, without nominal or par value, said stock to be full

paid stock and not liable to any further call or assessment thereon.

Yours very truly,

(s) J. M. HOLLIDAY
J. M. HOLLIDAY

After consideration of the foregoing letter and upon motion, duly made and seconded it was unanimously

RESOLVED that it is to the advantage of this company to acquire the properties offered to this Company by Mr. J. M. Holliday in the letter dated July 24th, 1919 submitted to this meeting and that the said properties are a good and sufficient consideration for One Million Two Hundred Fifty Thousand (1,250,000) shares of the common capital stock of this company and the sum of Eleven Million, Five Hundred Thousand ($11,500,000.00) dollars in cash.

RESOLVED FURTHER that this company accepts the said offer of Mr. J. M. Holliday and that upon the transfer to this company of said properties and assets by proper assignments, deeds and other instruments of transfer, the proper officers of this corporation be and they hereby are authorized and directed to pay the full consideration named in said offer, that is to say, they shall pay to J. M. Holliday or his nominees, Eleven Million Five Hundred Thousand ($11,500,000.00) Dollars in cash and shall issue and deliver to J. M. Holliday, or his nominees, certificates aggregating One Million Two Hundred Fifty Thousand (1,250,000) shares of the common capital stock of this company; said One Million Two Hundred Fifty Thousand shares of stock to be deemed full paid stock and not liable to any further call or assessment thereon. The ten shares (10) of stock subscribed for by the signers of the certificate of incorporation of this company, having been as-

signed by them to J. M. Holliday, are included in said One Million Two Hundred Fifty Thousand (1,250,000) shares, and the consideration moving to this company from J. M. Holliday, as aforesaid, therefore includes full payment for the issuance of the stock of this corporation subscribed for by its incorporators.

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**Petitioner's Exhibit Holliday No. 10.**

Pittsburgh, Penn'a,
July 30th, 1919.

Transcontinental Oil Company,
Benedum-Trees Building,
Pittsburgh, Pennsylvania.

Gentlemen:

Referring to my contract with your Company, in which I agreed to turn over certain properties in consideration of One Million Two Hundred Fifty Thousand (1,250,000) Shares of the capital stock of your Company and Eleven Million, Five Hundred Thousand ($11,500,000) Dollars cash, you will please issue said 1,250,000 Shares of stock to the following:

| | | |
|---|---|---|
| Riverside Eastern Oil Company.... | 41,666 | Shares |
| Riverside Western Oil Company... | 41,667 | " |
| Pittsburgh Texas Oil & Gas Company..... | 158,833 | " |
| Jointly to M. L. Benedum & F. B. Parriott (By direction of Tex-Penn Oil Co.)..... | 500,000 | " |
| Jointly to M. L. Benedum and F. B. Parriott..... | 507,834 | " |
| Total..... | 1,250,000 | Shares |

Very truly yours,

J. M. HOLLIDAY

## Petitioner's Exhibit Holliday No. 11.

Pittsburgh, Penn'a,
July 30th, 1919.

Transcontinental Oil Company,
Benedum-Trees Building,
Pittsburgh, Pennsylvania.

Gentlemen:

Referring to my contract with your Company, in which I agreed to turn over certain properties in consideration of One Million Two Hundred Fifty Thousand (1,250,000) Shares of the capital stock of your Company and Eleven Million, Five Hundred Thousand ($11,500,000) Dollars cash, you will please pay out said $11,500,000.00 cash, as follows:

| | |
|---|---|
| Riverside Western Oil Company..... | $1,250,000.00 |
| Riverside Eastern Oil Company..... | 1,250,000.00 |
| F. B. Parriott, Attorney..... | 5,250,000.00 |
| M. L. Benedum & F. B. Parriott (Jointly)..... | 3,400,000.00 |
| Tex-Penn Oil Company..... | 350,000.00 |
| Total..... | $11,500,000.00 |

Very truly yours,

J. M. HOLLIDAY

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## Petitioner's Exhibit Zellmann No. 12.

Agreement between five individuals and Tex-Penn Oil Company dated October 31, 1918.

(This exhibit is the same as Petitioner's Exhibit No. 11, printed herein at page 1799, *ante*.)

## Petitioner's Exhibit Zellmann No. 13.

Cancelled check for $100,000, payable to Tex-Penn Oil Company, signed by F. B. Parriott, Agent.

(Substance recited in statement of evidence: see page 677, *ante.*)

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## Petitioner's Exhibit Zellmann No. 14.

Cancelled check for $100,000, payable to F. B. Parriott, Agent, and signed Tex-Penn Oil Company.

(Substance recited in statement of evidence: see page 677, *ante.*)

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## Petitioner's Exhibit Zellmann No. 15.

Cancelled check for $100,000, payable to M. L. Benedum and signed F. B. Parriott, Agent.

(Substance recited in statement of evidence: see page 677, *ante.*)

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## Petitioner's Exhibit Zellmann No. 16.

Agreement dated October 31, 1918, between F. B. Parriott, J. L. Kirkland, J. B. Lantz and W. E. Wrather.

(This exhibit is the same as Petitioner's Exhibit No. 12, printed herein: see page 678, *ante.*)

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## Petitioner's Exhibit Zellmann No. 17.

Cancelled check for $5,000,000, payable to F. B. Parriott, Attorney, and signed Transcontinental Oil Company.

(Substance recited in statement of evidence: see page 679, *ante.*)

## Petitioner's Exhibit Zellmann No. 18.

Cancelled check for $250,000, payable to F. B. Parriott, Attorney, and signed Transcontinental Oil Company.

(Substance recited in statement of evidence; see page 679, *ante*.)

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## Petitioner's Exhibit Zellmann No. 19.

Cancelled check for $3,400,000, payable to M. L. Benedum and F. B. Parriott, signed Transcontinental Oil Company.

(Substance recited in statement of evidence; see page 679, *ante*.)

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## Petitioner's Exhibit Zellmann No. 20.

Check No. 6

TRANSCONTINENTAL OIL COMPANY
BENEDUM-TREES BUILDING

Pittsburgh, Pa., July 31st, 1919

TO FIRST NATIONAL BANK AT PITTSBURGH, PITTSBURGH, PA.
$350,000.00

PAY * * * THREE HUNDRED FIFTY THOUSAND DOLLARS ONLY * * *

To The Order of
Tex-Penn Oil Company,
Pittsburgh, Pa.

TRANSCONTINENTAL OIL COMPANY
EDW. KIPPAX
Treasurer

Countersigned:
A. B. DALLY, JR.
President

*Petitioner's Exhibit Zellman No. 20.*

(*Reverse side*)

ENDORSEMENT

By endorsement below the payee acknowledges the full payment of the accounts listed on the statement bearing the same number detached herefrom, now in possession of the payee.

(Endorse Here)

For deposit to credit of
TEX-PENN OIL COMPANY
S. E. DRUM
Asst. Treas.

## Petitioner's Exhibit Zellmann No. 21.

Canceiled check for $1,250,000, payable to Riverside Eastern Oil Company, signed Transcontinental Oil Company.

(Substance recited in statement of evidence: see page 680, *ante.*)

## Petitioner's Exhibit Zellmann No. 22.

Cancelled check for $1,250,000, payable to Riverside Western Oil Company, signed Transcontinental Oil Company.

(Substance recited in statement of evidence: see page 680, *ante.*)

## Petitioner's Exhibit Zellmann No. 23.

Check book stubs of Benedum-Parriott joint account.

(Substance recited in statement of evidence: see page 681, *ante.*)

## Petitioner's Exhibit Zellmann No. 24.

Cancelled check for $2,004,699.54, payable to First National Bank at Pittsburgh, signed M. L. Benedum and F. B. Parriott.

(Substance recited in statement of evidence: see page 681, *ante*.)

## Petitioner's Exhibit Zellmann No. 25.

Cancelled check for $1,037,650.23, payable to F. B. Parriott, signed by M. L. Benedum and F. B. Parriott.

(Substance recited in statement of evidence: see page 681, *ante*.)

## Petitioner's Exhibit Zellmann No. 26.

Cancelled check for $357,650.23, payable to First National Bank at Pittsburgh, signed M. L. Benedum and F. B. Parriott.

(Substance recited in statement of evidence: see page 681, *ante*.)

## Petitioner's Exhibit Zellmann No. 27.

Entry appearing upon F. B. Parriott, Attorney, Journal page 5:

AUGUST 1, 1919

| | | | |
|---|---|---|---|
| 43 | Tex-Penn Oil Co. | 350 000 00 | |
| | M. L. Benedum | | 140 000 00 |
| | F. B. Parriott | | 210 000 00 |
| | To chge money paid by Transcontinental Oil Co. to Tex-Penn Oil Co. being amount taken out of M. L. B. and F. B. P. share of purchase price of Duke-Knoles Pool property. | | |

## Petitioner's Exhibit Zellmann No. 28.

Entry appearing upon F. B. Parriott, Attorney, Journal page 4:

JULY 31, 1919

| | | | |
|---|---|---|---|
| 4 | Transcontinental Oil Co. | 5 250 000 00 | |
| 2 | W. E. Wrather | | 1 500 000 00 |
| 4 | J. B. Lantz | | 1 500 000 00 |
| 6 | J. L. Kirkland | | 2 250 000 00 |
| | Entry on c 7-ck from Transc. Oil Co. should have been credited as above being purchase price of WEW JBL & JLK-share of 5/8 int in Duke-Knoles Pool and Tex-Penn Oil Co. stock. | | |

## Petitioner's Exhibit Zellmann No. 29.

DECEMBER 31, 1919

| | | |
|---|---|---|
| W. E. Wrather | 43,750.00 | |
| J. B. Lantz | 43,750.00 | |
| J. L. Kirkland | 65,625.00 | |
| F. B. Parriott | 65,625.00 | |
| M. L. Benedum | 131,250.00 | |
| Tex-Penn Oil Co. | | 350,000.00 |

To correct Journal entry page 5 distributing amount paid TexPenn by Transcontinental Oil Co. and deducted from M. L. B. (Benedum) and F. B. P. (Parriott) cash proceeds of sale Duke-Knoles property to Transcontinental Oil Co. as this amount was to be apportioned against the sale price received by all the individual interests reducing such sale prices of 5/8 int. per agreement to following:

| | |
|---|---|
| W. E. Wrather | $1,456,250.00 |
| J. B. Lantz | 1,456,250.00 |
| J. L. Kirkland | 2,184,375.00 |
| F. B. Parriott | 2,184,375.00 |
| M. L. Benedum | 1,368,750.00 |
| Total | $8,650,000.00 |

## Petitioner's Exhibit Zellmann No. 30.

Page 8 of F. B. Parriott journal, debiting W. E. Wrather, J. B. Lantz, and J. L. Kirkland with $10.00 each on account of sale of Tex-Penn stock.

(Set out in full in the statement of evidence: see page 688, *ante*.)

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## Petitioner's Exhibit Zellmann No. 31.

Cancelled check for $2,000,000, payable to J. L. Kirkland, signed F. B. Parriott, Attorney in Fact.

(Substance recited in statement of evidence: see page 689, *ante*.)

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## Petitioner's Exhibit Zellmann No. 32.

Cancelled check for $1,400,000, payable to W. E. Wrather, signed by F. B. Parriott, Attorney in Fact.

(Substance recited in statement of evidence: see page 689, *ante*.)

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## Petitioner's Exhibit Zellmann No. 33.

Cancelled check for $1,400,000, payable to J. B. Lantz, signed F. B. Parriott, Attorney in Fact.

(Substance recited in statement of evidence: see page 689, *ante*.)

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## Petitioner's Exhibit Zellmann No. 34.

STATEMENT

M. L. BENEDUM

In account with

F. B. PARRIOTT Attorney

| | | *Dr.* | *Cr.* |
|---|---|---|---|
| Cash paid by Transcontinental Oil Co. to Tex-Penn Oil Co. out of sale price due M. L. B. from Duke-Knoles Property | | | $ 8,750.00 |
| 6/16 Oil Sales Duke-Knoles Pool to 6/30/19 | | | 215,168.55 |
| 6/16 Interest on Bank Balances | | | 5,260.28 |
| Cost of Tex-Penn Oil Co. Stock: | | | |
| —1500 shares rec'd in exchange for pro rata cost of drilling Sawdon & Duke Wells per itemized statement attached | $20,361.32 | | |
| —3420 shares at par | 85,500.00 | | |
| Cost of stock purchased from Wrather, Kirkland & Lantz | 15.00 | $105,876.32 | |
| Funds from Oil Sales diverted to liquidate Tex-Penn Oil Co. liabilities | | 86,863.55 | |
| | | $192,739.87 | $229,178.83 |
| | | | 192,739.87 |
| Balance due M. L. B. as of 12/31/19 | | | $ 36,438.96 |

Amount of depletion to be applied against M. L. Benedum's Oil Sales on 1919 Income Return—$56,250.00.

## Petitioner's Exhibit Zellmann No. 35.

STATEMENT

F. B. PARRIOTT

In account with

F. B. PARRIOTT Attorney

| | | | Dr. | Cr. |
|---|---|---|---|---|
| | Cash paid by Transcontinental Oil Co. to Tex-Penn Oil Co. out of sale price due F. B. P. from Duke-Knoles Property | | | $144,375.00 |
| | 3/16 Oil Sales Duke-Knoles Pool to 6/30/19 | | | 107,584.22 |
| | 3/16 Interest on Bank Balances | | | 2,630.14 |
| | Cost of Tex-Penn Stock: | | | |
| | —750 shares rec'd in exchange for pro rata cost of drilling Sawdon & Duke Wells per itemized statements attached. | $10,180.70 | | |
| | —1710 shares at par | 42,750.00 | | |
| | Cost of stock purchased from Wrather, Kirkland & Lantz | 15.00 | $52,945.70 | |
| | Funds from Oil Sales diverted to liquidate Tex-Penn Oil Co. liabilities | | 43,431.75 | |
| | | | $96,377.45 | $254,589.36 |
| | | | | 96,377.45 |
| | Balance due F. B. P. as of 12/31/19 | | | $158,211.91 |

Amount of depletion to be applied against F. B. Parriott's Oil Sales on 1919 Income Return—$28,125.00.

## Petitioner's Exhibit Zellmann No. 36.

12/31/19

STATEMENT

J. L. KIRKLAND

In account with

F. B. PARRIOTT Attorney

| | | Dr. | Cr. |
|---|---|---|---|
| Sale Price 3/16 interest in Duke-Knoles Property | | | $2,184,375.00 |
| 3/16 Oil Sales Duke-Knoles Pool to 6/30/19 | | | 107,584.20 |
| 3/16 Interest on Bank Balances | | | 2,630.14 |
| Loss on Tex-Penn Stock: | | | |
| —750 shares rec'd in exchange for pro rata cost of drilling Sawdon & Duke Wells per itemized statements attached | $10,180.70 | | |
| —1710 shares purchased at par | 42,750.00 | | |
| | $52,930.70 | | |
| Sale price of above to M. L. B. & F. B. P. | 10.00 | $52,920.70 | |
| Funds from Oil Sales diverted to liquidate Tex-Penn Oil Company's liabilities | | 43,431.75 | |
| | | $96,352.45 | $2,294,589.34 |
| | | | 96,352.45 |
| | | | $2,198,236.89 |
| LESS | | | |
| Cash paid to J. L. K. by Attorney 8/27/19 | | | 2,000,000.00 |
| BALANCE DUE J. L. K. as of 12/31/19 | | | $ 198,236.89 |

Amount of depletion to be applied against J. L. Kirkland's Oil Sales in 1919 Income Return—$28,125.00.

## Petitioner's Exhibit Zellmann No. 37.

12/31/19

STATEMENT

W. E. WRATHER

In account with

F. B. PARRIOTT Attorney

| | | | Dr. | Cr. |
|---|---|---|---|---|
| | Sale Price ⅛th interest in Duke-Knoles Property | | | 1,456,250.00 |
| | ⅛th Oil Sales Duke-Knoles Pool to 6/30/19 | | | 71,722.81 |
| | ⅛th Interest on Attorney Bank Balances | | | 1,753.44 |
| | Loss on Sale of Tex-Penn Oil Co. Stock: | | | |
| | —500 shares received in exchange for ⅛th cost of drilling Sawdon & Duke Wells per itemized statements herewith | $ 6,944.02 | | |
| | Stock purchased at par (1140 sh. @ $25.00) | 28,500.00 | | |
| | | 35,444.02 | | |
| | Sale price of above to M. L. B. & F. B. P. | 10.00 | 35,434.02 | |
| | Funds diverted to liquidate Tex-Penn Oil Company's liabilities | | 28,954.50 | |
| | | | $64,388.52 | $1,529,726.25 |
| | | | | 64388.52 |
| | | | | $1,465,337.73 |
| | LESS | | | |
| | Cash paid to W. E. W. by Attorney 8/12/19 | | | $1,400,000.00 |
| | BALANCE DUE W. E. W. as of 12/31/19 | | | $ 65,337.73 |

Amount of depletion to be applied against Oil Sales on 1919 income return of W. E. Wrather (⅛th interest) is $18,750.00.

## Petitioner's Exhibit Zellmann No. 38.

12/31/19

STATEMENT

J. B. LANTZ

In account with

F. B. PARRIOTT Attorney

| | | Dr. | Cr. |
|---|---|---|---|
| Sale Price ⅛th interest in Duke-Knoles Property | | | $1,456,250.00 |
| ⅛th Oil Sales Duke-Knoles Pool to 6/30/19 | | | 71,722.81 |
| ⅛th Interest on Bank Balances | | | 1,753.43 |
| Loss on Sale of Tex-Penn Stock: —500 shares received in exchange for pro rata share cost of drilling Sawdon and Duke Wells per itemized statement attached | $ 7,885.48 | | |
| Stock purchased at par (1140 sh. @ $25.00) | 28,500.00 | | |
| | $36,385.48 | | |
| Sale price of above to M. L. B. & F. B. P. | 10.00 | | |
| | $36,375.48 | $36,375.48 | |
| Funds diverted to liquidate Tex-Penn Oil Company liabilities | | 28,954.50 | |
| | | $65,329.98 | $1,529,726.24 |
| | | | 65,329.98 |
| | | | $1,464,396.26 |
| LESS | | | |
| Cash paid to J. B. Lantz by Attorney 8/8/19 | | | 1,400,000.00 |
| BALANCE DUE J. B. L. as of 12/31/19 | | | $ 64,396.26 |

Amount of depletion to be applied against J. B. Lantz Oil Sales on 1919 Income return—$18,750.00.

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## Petitioner's Exhibit No. 30.

Statement showing wells drilled on Duke-Knoles leases and production therefrom prior to August 1, 1919.

(Printed in full in the statement of evidence at page 772.)

## Petitioner's Exhibit No. 31.

### TEX-PENN OIL COMPANY

COMPARATIVE BALANCE SHEETS AT DATES INDICATED

| | ASSETS | *October 31, 1918* | *December 31, 1918* | *July 31, 1919* |
|---|---|---|---|---|
| | Cash | | $ 3,931.85 | $ 11,225.20 |
| 10 | Notes and Accounts Receivable | | 3,068.30 | 58,581.62 |
| | Due from Transcontinental Oil Company | | | 81,188.37 |
| | Inventory—Oil | | | 92,981.44 |
| | Inventory—Warehouse Supplies | | 56,867.21 | 158,418.25 |
| | Well Farm Investment | | 55,836.70 | 633,828.32 |
| | Leaseholds | $100,000.00 | 119,461.95 | 1,835,223.29 |
| | Deferred Charges | | 16,741.05 | 15,126.52 |
| | TOTAL | $100,000.00 | $255,907.06 | $2,886,573.01 |
| | LIABILITIES AND CAPITAL | | | |
| | Notes and Accounts Payable | | $155,907.06 | $ 330,094.41 |
| | Advances—F. B. Parriott, Attorney | | | 288,000.00 |
| 20 | Capital Stock | $100,000.00 | 100,000.00 | 2,000,000.00 |
| | Surplus | | | 68,478.60 |
| | TOTAL | $100,000.00 | $255,907.06 | $2,886,573.01 |

## Petitioner's Exhibit No. 32.

### TEX-PENN OIL COMPANY

ANALYSIS OF LEASEHOLD ACCOUNT

JULY 31, 1919

| | | |
|---|---|---|
| 30 | 2/8 Interest in 3,479.85 Acres in Comanche County, Texas | $ 100,000.00 |
| | ¼ of Bonus and Annual Rental on 1,074½ Acres in Eastland County, Texas (Thorpe Leases) | 1,344.13 |
| | ¼ of Expenses on Leases in Uvalde, Edwards, Kimball and Real Counties, Texas | 1,266.04 |
| | Chafin Glasscock Lease | 5,452.00 |
| | Richard T. Smith Lease | 320.00 |
| | W. D. Green Lease | 892.30 |
| | J. M. Shelton Lease | 7,500.00 |
| | Fort Terrett Ranch Company Leases | 4,176.14 |
| | J. G. Lantz ¼ Interest in Texas Acreage | 10,000.00 |
| | Certain Oil and Gas Leases in Oldham and Sutton Counties, Texas. Right, Title and Interest in Certain Contract of 6-24-19 with J. W. Leonard and L. Restrepo for Acquisition of 4/5 of Working Interest in Leases of 810,000 | |
| 40 | Acres in South America | 1,672,000.00 |
| | Lease Bonus Payments | 32,272.68 |
| | TOTAL | $1,835,223.29 |

## Petitioner's Exhibit No. 33.

### TEX-PENN OIL COMPANY

### STATEMENT OF INCOME, PROFIT AND LOSS

### NOVEMBER 1, 1918 TO JULY 31, 1919

| | | | |
|---|---|---|---|
| INCOME | | | |
| Oil Revenue | | $226,576.01 | |
| Gas Revenue | | 16,493.64 | |
| Water Station Revenue | | 842.29 | |
| Discount on Purchases | | 640.97 | |
| Miscellaneous Income | | 15.00 | |
| TOTAL INCOME | | | $244,567.91 |
| EXPENSES | | | |
| Operating: | | | |
| Farm Expenses | $59,708.58 | | |
| Lease Expenses | 20,732.15 | | |
| TOTAL OPERATING EXPENSES | | $80,440.73 | |
| Administrative: | | | |
| Salaries and Expenses | $75,064.81 | | |
| Taxes | 8,234.11 | | |
| Interest | 7,466.15 | | |
| Office Expense | 3,488.46 | | |
| Automobile and Traveling Expense | 1,148.15 | | |
| Insurance | 246.90 | | |
| TOTAL ADMINISTRATIVE EXPENSES | | 95,648.58 | |
| TOTAL EXPENSES | | | 176,089.31 |
| NET PROFIT BEFORE PROVIDING FOR DEPLETION AND DEPRECIATION | | | $ 68,478.60 |

## Petitioner's Exhibit No. 34.

### TEX-PENN OIL COMPANY

### CURRENT FINANCIAL POSITION ON AUGUST 1, 1919

| | | |
|---|---|---|
| Accounts Payable | $258,096.05 | |
| Notes Payable and Accrued Interest | 191,835.42 | |
| Due F. B. Parriott, Attorney | 80,162.94 | |
| TOTAL LIABILITIES | | $530,094.41 |
| Less: Current Assets | | |
| Cash | $11,225.20 | |
| Notes and Accounts Receivable | 58,581.62 | |
| Due from Transcontinental Oil Co. | 81,188.37 | |
| Inventory—Oil | 92,981.44 | |
| TOTAL CURRENT ASSETS | | 243,976.63 |
| DEFICIENCY | | $286,117.78 |

## Petitioner's Exhibit No. 35.

### TEX-PENN OIL COMPANY

### STATEMENT SHOWING CAPITAL STOCK PAYMENTS AND OTHER CAPITAL CONTRIBUTIONS

| *Date* | *Shares* | *Total* | *Cost* | *Property* |
|---|---|---|---|---|
| Nov. 1, 1918 | 4,000 | $ 100,000.00 | $100,000.00 | $ |
| Jan. 16, 1919 | 1,280 | 32,000.00 | 32,000.00 | |
| Feb. 13, 1919 | 1,200 | 30,000.00 | 30,000.00 | |
| Mar. 1, 1919 | 1,072 | 26,800.00 | 26,800.00 | |
| Mar. 18, 1919 | 640 | 16,000.00 | 16,000.00 | |
| Apr. 3, 1919 | 688 | 17,200.00 | 17,200.00 | |
| Apr. 14, 1919 | 1,072 | 26,800.00 | 26,800.00 | |
| Apr. 29, 1919 | 1,120 | 28,000.00 | 28,000.00 | |
| May 14, 1919 | 720 | 18,000.00 | 18,000.00 | |
| May 28, 1919 | 592 | 14,800.00 | 14,800.00 | |
| June 17, 1919 | 256 | 6,400.00 | 6,400.00 | |
| July 24, 1919 | 480 | 12,000.00 | 12,000.00 | |
| July 24, 1919 | 66,880 | 1,672,000.00 | | 1,672,000.00 |
| TOTAL CAPITAL STOCK | 80,000 | $2,000,000.00 | $328,000.00 | $1,672,000.00 |

Advances to company out of 5/8th interest in oil and gas sales:

| | |
|---|---|
| June 17, 1919 | $ 50,000.00 |
| July 1, 1919 | 50,000.00 |
| July 10, 1919 | 50,000.00 |
| July 24, 1919 | 138,000.00 |
| TOTAL | $288,000.00 |

## Petitioner's Exhibit No. 36.

### PITTSBURGH-TEXAS OIL & GAS CO.

### STATEMENT SHOWING ALLOCATION OF PURCHASE PRICE OF BOYNTON REFINERY

| | Allocation of Purchase Price by Pgh.-Tex. | Additions Made by Pgh.-Tex. | Book Value July 31, 1919 |
|---|---|---|---|
| Plants #1 and #2 | $207,100.00 | $17,645.60 | $224,745.60 |
| Pipe Line | 119,200.00 | 7,189.56 | 126,389.56 |
| Houses | 13,200.00 | ..... | 13,200.00 |
| Reservoir | 4,800.00 | ..... | 4,800.00 |
| Tanks | 61,765.84 | 62,503.85 | 124,269.69 |
| Stores | 3,220.87 | 3,220.87* | ..... |
| Kernal Lease | ..... | ..... | ..... |
| Real Estate | 3,175.00 | ..... | 3,175.00 |
| Tank Cars | 164,779.13 | ..... | 164,779.13 |
| Furniture & Fixtures | 1,200.00 | 3,807.94 | 5,007.94 |
| Water Lines | 5,220.00 | ..... | 5,220.00 |
| Plant Equipment | 15,720.00 | ..... | 15,720.00 |
| Automobiles | 619.16 | 5,531.74 | 6,150.90 |
| TOTALS | $600,000.00 | $93,457.82 | $693,457.82 |

* Credit.

## Petitioner's Exhibit No. 37.

### PITTSBURGH-TEXAS OIL AND GAS COMPANY

### STATEMENT SHOWING DEPRECIATION APPLIED TO BOYNTON REFINERY

| | Cost to July 31, 1919 | Depreciation | | Depreciated Plant Value July 31, 1919 |
|---|---|---|---|---|
| | | Rate | Amount | |
| Plants #1 and #2 | $224,745.60 | 7% | $3,278.25 | $221,467.35 |
| Pipe Line | 126,389.56 | 8% | 2,149.80 | 124,239.76 |
| Houses | 13,200.00 | 5% | 148.61 | 13,051.39 |
| Reservoir | 4,800.00 | ... | ..... | 4,800.00 |
| Tanks | 124,269.69 | 5% | 693.88 | 123,575.81 |
| Real Estate | 3,175.00 | ... | ..... | 3,175.00 |
| Tank Cars | 164,779.13 | 8% | 3,025.00 | 161,754.13 |
| Furniture and Fixtures | 5,007.94 | 10% | 31.40 | 4,976.54 |
| Water Lines | 5,220.00 | 10% | 117.05 | 5,102.95 |
| Plant Equipment | 15,720.00 | 10% | 353.07 | 15,366.93 |
| Automobiles | 6,150.90 | 20% | 78.13 | 6,072.77 |
| TOTALS | $693,457.82 | | $9,875.19 | $683,582.63 |

## Petitioner's Exhibit No. 38.

### PITTSBURGH-TEXAS OIL & GAS CO.

STATEMENT SHOWING BOOK VALUE OF PREDECESSOR OWNER OF REFINERY

| | Cost on Boynton Ref. Co. 4/30/19 | Additions to 7/31/19 | Depreciation to 7/31/19 | Net Book Value |
|---|---|---|---|---|
| Plants #1 and #2 | $187,330.24 | $17,645.60 | $28,038.38 | $176,937.46 |
| Pipe Line | 107,490.50 | 7,189.56 | 14,593.12 | 100,086.74 |
| Houses | 11,892.77 | ..... | 972.20 | 10,920.57 |
| Reservoir | 4,481.24 | ..... | ..... | 4,481.24 |
| Tanks | 55,511.01 | 62,503.85 | 3,582.09 | 114,432.77 |
| Stores | 3,220.87 | 3,220.87* | ..... | ..... |
| Kerral Lease | 35.00 | ..... | ..... | 35.00 |
| Real Estate | 3,140.00 | ..... | ..... | 3,140.00 |
| Tank Cars | 151,250.00 | ..... | 23,695.83 | 127,554.17 |
| Furniture and Fixtures | 1,256.10 | 3,807.94 | 243.16 | 4,820.88 |
| Water Lines | 4,682.02 | ..... | 605.81 | 4,076.22 |
| Plant Equipment | 14,122.78 | ..... | 813.88 | 13,308.90 |
| Automobiles | 619.16 | 5,531.74 | 182.30 | 5,968.60 |
| | $545,031.50 | $93,457.62 | $72,726.77 | $565,762.55 |

* Credit.

## Petitioner's Exhibit No. 39.

### PITTSBURGH-TEXAS OIL AND GAS COMPANY

NET CURRENT ASSETS

JULY 31, 1919

| | | |
|---|---|---|
| CURRENT ASSETS: | | |
| Cash | $ 27,697.39 | |
| Accounts Receivable and Advances | 39,774.63 | |
| Inventories | 207,583.73 | |
| Subscriptions to Treasury Stock | 652,915.00 | |
| Unexpired Insurance Premiums | 3,200.93 | $930,371.68 |
| CURRENT LIABILITIES: | | |
| Accounts Payable | $119,887.20 | |
| Balance of Purchase Price, Boynton Refinery | 370,583.09 | 490,470.29 |
| NET CURRENT ASSETS | | $439,901.39 |

## Petitioner's Exhibit No. 40.

### RIVERSIDE EASTERN OIL COMPANY

STATEMENT SHOWING ASSETS OF COMPANY AND ITS SUBSIDIARIES AS TAKEN OVER ON AUGUST 1, 1919

| Plant Location | Year Constructed | Type | Daily Gas Capacity M. C. F. | Cost | Depreciated Value 8/1/19 |
|---|---|---|---|---|---|
| Follansbee, W. Va. | 1910 | Compression | 500,000 | $ 5,931.56 | $ 3,624.15 |
| Hollidays Cove, W. Va. | 1910 | Compression | 330,000 | 19,537.54 | 18,158.41 |
| Blue Creek, W. Va. | 1913 | Compression | 1,000,000 | 50,867.57 | 34,331.91 |
| Fellsburg, W. Va. | 1918 | Compression | 200,000 | 16,301.54 | 14,729.93 |
| Dover, W. Va. | 1916 | ..... | 175,000 | 17,342.20 | 12,109.43 |
| Wayland, W. Va. | 1916 | Compression | 450,000 | 50,319.90 | 36,673.08 |
| Barne, W. Va. | 1916–1917 | Compression | 350,000 | 82,237.77 | 63,289.47 |
| Finch, W. Va. | 1916–1917 | Compression & Absorption | 600,000 | 48,403.62 | 36,874.44 |
| Toronto, Ohio | 1917 | Compression | 175,000 | 29,395.61 | 23,380.66 |
| Vending Stations: | | | | | |
| Follansbee, W. Va. | 1910 | ..... | ..... | 1,858.94 | 1,759.55 |
| Blue Creek, W. Va. | 1916 | ..... | ..... | 10,745.12 | 9,169.94 |
| District Equipment | 1910–19 | ..... | ..... | 134,208.61 | 90,147.69 |
| Oil & Gas Wells in Ohio & West Virginia—operated in conjunction with gasoline plants | ... | ..... | ..... | 89,812.61 | 70,921.46 |
| TOTAL | | | | $556,962.59 | $415,170.12 |

### RELATED MARKET FACILITIES

| Location | Type | Plant Construction | Tanks and Equipment | Drums and Cans | Land | General | Cost | Depreciated Value 8/1/19 |
|---|---|---|---|---|---|---|---|---|
| New York | 6 Distributing Stations | $25,921.06 | $ 9,077.39 | $2,433.69 | $13,787.36 | ..... | $ 51,219.50 | $ 41,702.45 |
| Pennsylvania | 10 Distributing Stations | 60,061.60 | 27,123.27 | 6,457.82 | 85,388.25 | ..... | 179,030.94 | 151,167.93 |
| | 1 Plant | | | | | | | |
| Illinois | 1 Service Station | 2,641.76 | 84.52 | ..... | ..... | ..... | 2,726.28 | 1,900.39 |
| Auto Equipment | | | | | | | 32,533.89 | 21,285.96 |
| Other Equipment—Furniture & Fixtures | | | | | | | 18,496.09 | 15,392.08 |
| | TOTAL | | | | | | $284,006.70 | $231,448.91 |
| | FROM ABOVE | | | | | | $556,962.59 | $415,170.12 |
| | GRAND TOTAL ALL ASSETS | | | | | | $840,969.29 | $646,619.03 |

NOTE: Stations were constructed in period 1913-1916.

## Petitioner's Exhibit No. 41.

### RIVERSIDE EASTERN OIL COMPANY

SUMMARY STATEMENT OF ASSETS AND ACCRUED DEPRECIATION

| | *Accumulated Cost* | *Accrued Depreciation* | *Net Book Value* |
|---|---|---|---|
| Riverside Eastern Oil Company... | $606,382.22 | $141,792.47 | $464,589.75 |
| Gasoline Supply Co..... | 177,077.43 | 35,369.90 | 141,707.53 |
| Gasoline Distributing Co..... | 52,254.07 | 15,638.66 | 36,615.41 |
| Riverside Oil Company of Illinois. | 5,255.57 | 1,549.23 | 3,706.34 |
| TOTALS..... | $840,969.29 | $194,350.26 | $646,619.03 |

## Petitioner's Exhibit No. 42.

### RIVERSIDE EASTERN OIL COMPANY

**Statement Showing Profits and Losses Before and After Depreciation**

| Year | Riverside Eastern Oil Company | Gasoline Supply Company | Gasoline Distributing Company | Riverside Oil Company of Illinois | Total Profits Before Depreciation | Depreciation | Profits After Depreciation |
|---|---|---|---|---|---|---|---|
| 1916 | $123,068.98 | $22,046.36 | $ 633.20 | ..... | $145,748.54 | $ 5,645.06 | $140,103.48 |
| 1917 | 69,044.92 | 28,280.73 | 2,231.58† | $ 6,049.76† | 89,044.31 | 29,087.29 | 59,957.02 |
| 1918 | 98,853.24 | 1,273.83 | 23,560.44† | 40,028.92† | 36,537.71 | 62,514.02 | 25,976.31† |
| 1919* | 3,366.57 | 2,561.93† | 3,874.47† | 29,732.83† | 32,802.66† | 41,392.77 | 74,195.43† |
| | $294,333.71 | $49,038.99 | $29,033.29† | $75,811.51† | $238,527.90 | $138,639.14 | $ 99,888.76 |
| | | | | Average per year | $ 66,565.00 | | $ 27,876.00 |

* 7 months.
† Loss.

## Petitioner's Exhibit No. 43.

# RIVERSIDE EASTERN OIL COMPANY

## BALANCE SHEETS (AS PER BOOKS) AT DATES INDICATED

| | November 8, 1915 | December 31, 1915 | December 31, 1916 | December 31, 1917 | December 31, 1918 | July 31, 1919 |
|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | |
| ..... | | $ 934.64 | $ 11,107.25 | $ 13,634.92 | $ 31,329.95 | $ 56,481.47 |
| ...d Accounts Receivable..... | | 1,974.00 | 37,077.03 | 486,698.45 | 449,374.14 | 1,101,400.63 |
| ...es ..... | | | | 69,980.85 | 110,217.47 | 22,009.27 |
| ...ptions to Stock..... | | 67,566.50 | | | | |
| ...y Bonds..... | | | | 5,150.00 | 26,600.00 | 29,930.00 |
| ...: Other Companies: | | | | | | |
| ...rside Oil Companies..... | $2,240,000.00 | 2,266,000.00 | 2,765,536.00 | | | |
| ...line Distributing Company..... | | | 172,100.00 | 175,600.00 | 175,600.00 | 175,600.00 |
| ...rside Oil Co. of Illinois..... | | | | 20,000.00 | 20,000.00 | 20,000.00 |
| ...rside Western Oil Company..... | | | | 24,450.00 | 24,450.00 | 24,450.00 |
| ...line Supply Company..... | | 10,000.00 | 10,000.00 | 10,000.00 | 10,000.00 | 10,000.00 |
| ...rman Gasol Company..... | | | | 2,860.00 | 2,860.00 | 2,860.00 |
| ...line Supply Co. of Illinois..... | | | | 10,000.00 | | |
| ...d Equipment..... | | | | 665,941.83 | 721,422.73 | 571,856.86 |
| ...site and Leases..... | | | | 21,103.73 | 59,873.36 | |
| ...ns, Patents, Rights, etc..... | | | | 2,130,390.27 | 2,130,390.27 | 2,130,390.27 |
| ...y Stock..... | 719,925.00 | 719,925.00 | 247,660.00 | 94,915.00 | 98,515.00 | 99,400.00 |
| ...nization Expense and Deferred Charges | | 364.86 | 30,550.25 | | 7,979.32 | 75,786.17 |
| ...g Fund—Debenture Bonds..... | | | | | 12,777.76 | 13,873.72 |
| TOTAL ASSETS..... | $2,959,925.00 | $3,066,765.00 | $3,274,030.53 | $3,730,725.05 | $3,881,390.00 | $4,334,038.39 |
| **LIABILITIES AND CAPITAL** | | | | | | |
| ...d Accounts Payable..... | | | $ 3.25 | $ 348,580.07 | $ 371,950.36 | $ 848,080.76 |
| ...g Bonds..... | | | | | 74,500.00 | 83,100.00 |
| ...es Payable..... | | | | | | 25,000.00 |
| ...e for Depreciation..... | | | | | 26,000.00 | 35,030.35 |
| ...ed Stock..... | $ 240,000.00 | $ 346,840.00 | 794,305.00 | 1,000,000.00 | 1,000,000.00 | 1,000,000.00 |
| ...on Stock..... | 2,000,000.00 | 2,000,000.00 | 2,000,000.00 | 2,000,000.00 | 2,000,000.00 | 2,000,000.00 |
| ...d Surplus—Treasury Stock..... | 719,925.00 | 719,925.00 | 388,860.00 | 236,115.00 | 237,915.00 | 238,150.00 |
| ...d Surplus..... | | | 90,862.28 | 146,029.98 | 171,024.64 | 104,677.28 |
| TOTAL LIABILITIES AND CAPITAL... | $2,959,925.00 | $3,066,765.00 | $3,274,030.53 | $3,730,725.05 | $3,881,390.00 | $4,334,038.39 |

## Petitioner's Exhibit No. 44.

### RIVERSIDE WESTERN OIL COMPANY

STATEMENT OF ASSETS OF RIVERSIDE WESTERN OIL CO. AND ITS SUBSIDIARY, GASOLINE SUPPLY CO. (MID-WEST)

| Plant Location | Year Constructed | Type | Daily Gas Capacity M. C. F. | Cost | Depreciated Value 8/1/19 |
|---|---|---|---|---|---|
| Nowato, Okla. | 1913 | Compression | 1,500,000 | $ 193,755.62 | $138,744.01 |
| Near Morris, Okla. | 1913 | Compression & Absorption | 2,000,000 | 187,255.95 | 135,509.02 |
| Near Morris, Okla. | 1913 | Compression | 750,000 | 78,065.84 | 51,156.69 |
| Near Delaware, Okla. | 1914 | Compression | 500,000 | 80,092.27 | 48,344.06 |
| Near Delaware, Okla. | 1914 | Compression | 500,000 | 52,776.12 | 31,703.51 |
| Near Bald Hill, Okla. | 1916 | Compression | 750,000 | 88,752.42 | 65,094.01 |
| Near Allwere, Okla. | 1916 | Compression | 750,000 | 152,059.20 | 110,997.24 |
| Blending Stations: | | | | | |
| Delaware, Okla. | 1914 | ..... | ..... | 31,894.33 | 20,431.66 |
| Near Morris, Okla. | 1916 | ..... | ..... | 62,094.08 | 50,997.39 |
| Add'l District Equipment | 1913–19 | ..... | ..... | 163,249.32 | 131,294.51 |
| TOTAL | | | | $1,089,995.15 | $784,272.10 |

### RELATED MARKET FACILITIES

| Location | Type | Plant Construction | Tanks and Equipment | Drums and Cans | Land | General | Cost | Depreciated Value 8/1/19 |
|---|---|---|---|---|---|---|---|---|
| Concord, Nebr. | Distributing Station | $ 1,020.06 | $ 1,600.32 | ..... | ..... | ..... | $ 2,620.38 | $ 1,932.[illegible] |
| Pender, Nebr. | Distributing Station | 1,147.26 | 1,854.86 | ..... | $975.00 | ..... | 3,977.12 | 2,934.[illegible] |
| Wayne, Nebr. | Distributing Station | 1,486.72 | 3,195.26 | $ 764.45 | 578.00 | ..... | 6,024.43 | 4,065.[illegible] |
| Des Moines, Iowa | Compounding Plants | 6,686.00 | 10,790.71 | 18,465.14 | ..... | ..... | 35,941.85 | 23,742.[illegible] |
| Sioux City, Iowa | Distributing Stations | 10,132.42 | 14,735.81 | 13,727.28 | ..... | ..... | 38,595.51 | 24,181.[illegible] |
| Lake Andes, S. D. | Distributing Station | 208.86 | ..... | ..... | ..... | ..... | 208.86 | 153.[illegible] |
| Tyndall, S. D. | Distributing Station | 1,429.28 | 1,234.63 | ..... | ..... | ..... | 2,663.91 | 2,060.[illegible] |
| Wahonda, S. D. | Distributing Station | 1,146.41 | 1,142.41 | ..... | ..... | ..... | 2,288.82 | 1,719.[illegible] |
| Auto Equipment | | | | | | $14,645.82 | 14,645.82 | 12,450.[illegible] |
| Horses and Wagons | | | | | | 6,485.80 | 6,485.80 | 992.[illegible] |
| Furniture and Fixtures | | | | | | 3,016.20 | 3,016.20 | 2,163.[illegible] |
| TOTAL | | | | | | | $ 116,468.70 | $ 76,321.[illegible] |
| FROM ABOVE | | | | | | | 1,089,995.15 | 784,272.[illegible] |
| GRAND TOTAL ALL ASSETS | | | | | | | $1,206,463.85 | $860,594.[illegible] |

NOTE: Plants constructed 1913-1916.

## Petitioner's Exhibit No. 45.

### RIVERSIDE WESTERN OIL COMPANY

### Statement Showing Profits and Losses Before and After Depreciation

| Year | Riverside Western Oil Company | Gasoline Supply Company | Total Profits Before Depreciation | Depreciation | Profits After Depreciation |
|---|---|---|---|---|---|
| 1913 | $ 13,159.63 * | | $ 13,159.63 | $ 2,009.18 | $ 11,150.45 |
| 1914 | 12,220.26 | | 12,220.26 | 8,678.59 | 3,541.67 |
| 1915 | 43,882.85 | $29,021.40† | 14,861.45 | 18,299.17 | 3,437.72† |
| 1916 | 178,964.97 | 5,715.28† | 173,249.69 | 48,797.07 | 124,452.62 |
| 1917 | 231,022.60 | 3,092.09 | 234,114.69 | 87,056.55 | 146,158.14 |
| 1918 | 166,644.68 | 1,479.96 | 168,124.64 | 109,737.63 | 58,387.01 |
| 1919* | 19,933.56 | 7,782.28 | 27,715.84 | 70,391.61 | 42,675.77† |
| | $665,828.55 | $22,382.35† | $643,446.20 | $345,869.80 | $297,576.40 |
| | Average per year | | $ 97,738.00 | | $ 45,200.00 |

*7 months.
† Loss.

## Petitioner's Exhibit No. 46.

### RIVERSIDE WESTERN OIL COMPANY

BALANCE SHEETS (AS PER BOOKS) AT DATES INDICATED

| | November 11, 1913 | December 31, 1913 | December 31, 1914 | December 31, 1915 | December 31, 1916 | December 31, 1917 | December 31, 1918 | July 31, 1919 |
|---|---|---|---|---|---|---|---|---|
| ASSETS | | | | | | | | |
| Cash | | $ 4,662.85 | $ 2,896.26 | $ 26,631.08 | $ 23,524.10 | $ 19,772.99 | $ 89,620.93 | $ 22,022.95 |
| Bills and Accounts Receivable | | 67,354.60 | 131,681.64 | 167,876.35 | 247,006.98 | 412,026.54 | 1,069,220.80 | 765,793.94 |
| Inventories | | 21,922.16 | 24,336.82 | 18,570.32 | 62,792.56 | 77,869.42 | 63,401.56 | 10,472.25 |
| Subscriptions to Stock | $ 112,250.00 | 32,850.00 | 17,550.00 | 8,767.68 | 2,925.00 | | | |
| Liberty Bonds | | | | | | 7,500.00 | 33,900.00 | 36,900.00 |
| Stock of Other Companies: | | | | | | | | |
| Gasoline Supply Co.–Midwest | | 4,468.00 | 30,000.00 | 30,000.00 | 30,000.00 | 30,000.00 | 33,512.50 | 38,433.00 |
| Riverside Western Oil Company of Kansas | | | | 10,000.00 | 10,0000.00 | | | |
| Plant and Equipment | | 54,644.36 | 158,633.16 | 211,462.97 | 685,480.71 | 991,795.57 | 1,046,397.79 | 1,076,760.11 |
| Contracts, Processes, etc. | 1,010,000.00 | 1,010,000.00 | 1,010,000.00 | 1,010,000.00 | 1,510,025.00 | 1,510,156.50 | 1,510,156.50 | 1,510,156.50 |
| Treasury Stock | | 333,325.00 | 136,400.00 | 28,400.00 | 316,025.00 | 80,000.00 | 80,300.00 | 80,300.00 |
| Deferred Charges | | 1,823.70 | 11,116.05 | 23,124.47 | 3,731.95 | | 3,660.40 | 6,466.93 |
| Sinking Fund–Debenture Bonds | | | | | | | 24,583.35 | 7,399.01 |
| TOTAL ASSETS | $1,122,250.00 | $1,530,990.67 | $1,522,613.93 | $1,534,832.87 | $2,891,511.30 | $3,129,121.02 | $3,954,753.83 | $3,554,604.69 |
| LIABILITIES AND CAPITAL | | | | | | | | |
| Bills and Accounts Payable | | $ 56,156.04 | $ 153,323.69 | $ 113,791.60 | $ 273,836.45 | $ 435,415.72 | $1,170,761.82 | $ 790,270.44 |
| Debenture Bonds | | | | | | | 32,600.00 | 37,500.00 |
| Reserve for Depreciation | | | | | 12,000.00 | 44,391.40 | 83,141.40 | 113,766.40 |
| Preferred Stock | $ 122,250.00 | 128,350.00 | 219,700.00 | 352,975.00 | 750,175.00 | 983,275.00 | 983,275.00 | 983,275.00 |
| Common Stock | 1,000,000.00 | 1,000,000.00 | 1,000,000.00 | 1,000,000.00 | 1,500,000.00 | 1,500,000.00 | 1,500,000.00 | 1,500,000.00 |
| Donated Surplus (Treasury Stock) | | 333,325.00 | 136,400.00 | 28,400.00 | 236,025.00 | | 160.00 | 160.00 |
| Earned Surplus | | 13,159.63 | 13,190.24 | 39,666.27 | 119,474.85 | 166,038.90 | 184,815.61 | 129,042.85 |
| TOTAL LIABILITIES AND CAPITAL | $1,122,250.00 | $1,530,990.67 | $1,522,613.93 | $1,534,832.87 | $2,891,511.30 | $3,129,121.02 | $3,954,753.83 | $3,554,604.69 |

## Petitioner's Exhibit No. 47.

TRANSCONTINENTAL OIL COMPANY

STATEMENT SHOWING WELLS DRILLED ON DUKE-KNOLES LEASES AFTER AUGUST 1, 1919

| *Farm* | *Well #* | *Completed* | *Initial Results* |
|---|---|---|---|
| J. N. Duke | 4 | 10-30-19 | 35 bbls. |
| J. N. Duke | 5 | 1-18-20 | 100 bbls. |
| J. N. Duke | 6 | 3-30-20 | 8 bbls. |
| G. W. Knoles | 4 | 1- 6-20 | Dry |
| S. E. Snodgrass | 2 | 9-18-19 | 30 bbls. |
| Mary Lewis | 1 | 8-13-19 | Dry |
| Mary Lewis | 2 | 8-31-19 | Dry |
| Mary Lewis | 4 | 10-14-19 | Dry |
| E. S. Merrick | 1 | 8-13-19 | Gas |
| E. S. Merrick | 2 | 3-30-20 | Gas |
| C. T. Moorman | 1 | 9-21-19 | Dry |
| C. T. Moorman | 2 | 4-28-20 | 5 bbls. |
| W. R. Gregory | 1 | 9- 2-19 | Dry |
| J. E. Guthrie | 1 | 9-27-19 | 40 bbls. |
| W. N. Koonce | 1 | 10-11-19 | Dry |
| W. N. Koonce | 2 | 11-22-19 | Dry |
| W. N. Koonce | 3 | 3-18-20 | 5 bbls. |
| L. C. Sherer | 1 | 9-25-19 | Dry |
| S. F. Peake | 1 | 11-13-19 | Dry |
| W. G. Burton | 1 | 12-16-19 | 100 bbls. |
| W. G. Burton | 2 | 4-22-20 | Dry |
| Eugene Gillock | 1 | 10-30-19 | Dry |
| M. C. Peake | 1 | 5-22-20 | Dry |
| J. W. Short | 1 | 11- 9-19 | 100 bbls. |
| J. W. Short | 2 | 11-17-19 | 100 bbls. |
| J. W. Short | 3 | 12- 7-19 | 100 bbls. |
| J. W. Short | 4 | 12- 3-19 | Gas |
| J. W. Short | 5 | 3-11-20 | Gas |

## Petitioner's Exhibit No. 48.

### TRANSCONTINENTAL OIL COMPANY

STATEMENT SHOWING RESULTS FROM OPERATIONS OF DUKE-KNOLES AND OTHER 1919 LEASES

| Lease | Production (Barrels) | Production (Revenue) | Operating Expenses | Well Cost | Total | Profit or Loss* | Number of Wells |
|---|---|---|---|---|---|---|---|
| **DUKE-KNOLES POOL, COMANCHE COUNTY, TEXAS** | | | | | | | |
| Duke, J. N. | $ 35,364.76 | $ 79,821.97 | $ 45,791.75 | $ 131,877.04 | $ 177,668.79 | $ 97,846.82* | 6 Producing Wells |
| Knoles, G. W. | 160,049.07 | 317,935.71 | 36,582.68 | 91,717.28 | 128,299.96 | 189,635.75 | 3 Producing Wells, 1 Dry Hole |
| Guthrie, J. E. | 10,862.45 | 24,988.31 | 12,072.52 | 14,978.54 | 27,051.06 | 2,062.75* | 1 Producing Well |
| Short, J. W. | 28,167.36 | 71,678.49 | 20,967.50 | 89,417.33 | 110,384.83 | 38,706.34* | 3 Producing Wells |
| Burton, W. G. | 8,463.56 | 24,090.48 | 9,234.46 | 38,029.69 | 47,264.15 | 23,173.67* | 1 Producing Well, 1 Dry Hole |
| Snodgrass, S. E. | 5,340.70 | 11,960.78 | 13,476.21 | 32,483.07 | 45,959.28 | 33,998.50* | 1 Producing Well |
| Moorman, C. T. | 4,916.01 | 11,737.94 | 13,172.29 | 45,162.54 | 58,334.83 | 46,596.89* | 1 Producing Well, 1 Dry Hole |
| Crowell, G. W. | 2,910.49 | 6,588.63 | 8,491.02 | 32,055.09 | 40,546.11 | 33,957.48* | 2 Producing Wells |
| Koonce, W. N. | 2,608.97 | 5,804.82 | 9,089.29 | 58,566.59 | 67,655.88 | 61,851.06* | 1 Producing Well, 2 Dry Holes |
| Lewis, Mary | 59.06 | 183.74 | 4,397.60 | 99,865.53 | 104,263.13 | 104,079.39* | 4 Dry Holes |
| Merrick, E. S. | | | | 38,221.17 | 38,221.17 | 38,221.17* | 2 Dry Holes |
| Gregory, W. R. | | | | 29,568.16 | 29,568.16 | 29,568.16* | 1 Dry Hole |
| Peake, S. T. | | | | 44,115.01 | 44,115.01 | 44,115.01* | 1 Dry Hole |
| Peake, M. C. | | | | 29,071.48 | 29,071.48 | 29,071.48* | 1 Dry Hole |
| Sherer, L. C. | | | | 7,478.68 | 7,478.68 | 7,478.68* | 1 Dry Hole |
| Gillock, Eugene | | | | 25,467.72 | 25,467.72 | 25,467.72* | 1 Dry Hole |
| TOTAL OIL — DUKE-KNOLES | $258,742.43 | $ 554,790.87 | $173,275.32 | $ 808,074.92 | $ 981,350.24 | $426,559.37* | |
| GAS WELLS | | 135,640.39 | 8,507.51 | 116,431.48 | 124,938.79 | 10,701.60 | 5 Gas Wells |
| TOTAL—DUKE-KNOLES | $258,742.43 | $ 690,431.26 | $181,782.63 | $ 924,506.40 | $1,106,289.03 | $415,857.77* | 19 Producing Oil Wells, 5 Gas Wells, 16 Dry Holes |
| **OTHER TEXAS AND OKLAHOMA LEASES** | | | | | | | |
| Thorpe, A. L. Eastland Co. | $ 20,248.23 | $ 38,143.63 | $ 19,455.56 | $ 87,118.53 | $ 106,574.09 | $ 68,430.46* | 1 Producing Well, 1 Dry Hole |
| Thorpe, P. E. Eastland Co. | 10,881.17 | 20,287.19 | 11,061.66 | 33,601.30 | 44,662.96 | 24,375.77* | 1 Producing Well |
| Wheeler, A. J. Brown Co. | | | | 52,764.24 | 52,764.24 | 52,764.24* | 1 Dry Hole |
| Wood, J. L. Callahan Co. | | | | 70,144.30 | 70,144.30 | 70,144.30* | 1 Dry Hole |
| Peterson, Sid Edwards Co. | | | | 57,777.34 | 57,777.34 | 57,777.34* | 1 Dry Hole |
| Patterson, N. D. Uvalde Co. | | | | 46,399.74 | 46,399.74 | 46,399.74* | 1 Dry Hole |
| Sango, E. Muskogee Co. | 149,023.80 | 324,315.20 | 27,665.83 | 14,734.46 | 42,400.29 | 281,914.91 | 3 Producing Wells, 2 Dry Holes |
| TOTAL OIL — OTHER LEASES | $180,153.20 | $ 382,746.02 | $ 58,183.05 | $ 362,539.91 | $ 420,722.96 | $ 37,976.94* | 5 Producing Oil Wells, 7 Dry Holes |
| GRAND TOTAL | $438,895.63 | $1,073,177.28 | $239,965.68 | $1,287,046.31 | $1,527,011.99 | $453,834.71* | |

## Petitioner's Exhibit No. 49.

### TRANSCONTINENTAL OIL COMPANY

PRODUCTION FROM DUKE-KNOLES

AUGUST 1, 1919 TO AUGUST 20, 1930

| | | |
|---|---|---|
| 1919 | 76,976.05 | Bbls. |
| 1920 | 49,584.54 | " |
| 1921 | 37,771.05 | " |
| 1922 | 27,449.17 | " |
| 1923 | 21,213.41 | " |
| 1924 | 14,146.25 | " |
| 1925 | 10,122.48 | " |
| 1926 | 8,427.82 | " |
| 1927 | 6,147.62 | " |
| 1928 | 3,478.89 | " |
| 1929 | 2,206.02 | " |
| 1930 | 1,219.13 | " |
| TOTAL | 258,742.43 | " |

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## Petitioner's Exhibit No. 50.

### TRANSCONTINENTAL OIL COMPANY

PRODUCTION FROM OTHER LEASES
ACQUIRED AT ORGANIZATION

AUGUST 1, 1919 TO AUGUST 20, 1930

| | | |
|---|---|---|
| 1919 | 99,021.46 | Bbls. |
| 1920 | 27,722.27 | " |
| 1921 | 16,374.22 | " |
| 1922 | 14,650.53 | " |
| 1923 | 11,343.18 | " |
| 1924 | 9,973.08 | " |
| 1925 | 8,522.29 | " |
| 1926 | 6,745.17 | " |
| 1927 | 4,855.42 | " |
| 1928 | 3,511.52 | " |
| 1929 | 2,548.22 | " |
| 1930 | 1,392.64 | " |
| TOTAL | 206,660. | " |

## Petitioner's Exhibit No. 51.

Statement showing wells drilled on leases other than Duke-Knoles acquired at organization of Transcontinental, together with dates of completion and initial results.

(Set out in full in the statement of evidence, at page 793, *ante*.)

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## Petitioner's Exhibit No. 52.

Statement showing total production from 1919 to 1930, inclusive, from Transcontinental leases acquired on organization.

(Set out in full in the statement of evidence, at page 794, *ante*.)

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## Petitioner's Exhibit No. 53.

(Marked for identification—not admitted.)

Statement showing earnings of Transcontinental before and after additional depreciation and depletion during the years 1919 to 1930, inclusive.

(Set out in full in the statement of evidence, at page 796, *ante*.)

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## Petitioner's Exhibit No. 54.

Statement showing major expenditures out of balance of working capital available for Transcontinental on August 1, 1919.

(Set out in full in the statement of evidence, at page 1092, *ante*.)

## Petitioner's Exhibit No. 55.

Statement of total production from leases acquired by Transcontinental shortly after organization. Not admitted; see offer to prove at pages 801-802 of the statement of evidence.

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## Petitioner's Exhibit No. 56.

SUMMARY STATEMENT OF CASH ADVANCES BY M. L. BENEDUM AND SARAH N. BENEDUM TO TRANSCONTINENTAL OIL COMPANY, SHOWING METHOD OF REPAYMENT

| *Year* | *Total* | *M. L. Benedum* | *S. N. Benedum* |
|---|---|---|---|
| 1920 | $1,048,875.75 | $1,023,875.75 | $ 25,000.00 |
| 1921 | 2,631,438.76 | 2,631,438.76 | ..... |
| 1922 | 3,160,734.00 | 1,573,484.00 | 1,587,250.00 |
| 1923 | 1,407,654.78 | 1,297,384.16 | 110,270.62 |
| 1924 | 922,991.59 | 299,181.39 | 623,810.20 |
| | $9,171,694.88 | $6,825,364.06 | $2,346,330.82 |

REPAID AS FOLLOWS

| | *Total* | *Cash* | *8% Bonds* | *Preferred Stock* | *Common Stock* |
|---|---|---|---|---|---|
| 1921 | $3,532,047.53 | $1,282,047.53 | $2,250,000.00 | | |
| 1922 | 100,000.00 | 100,000.00 | | | |
| 1923 | | | | | |
| 1924 | 4,803,647.35 | 930,897.35 | | 3,872,750.00 | |
| 1925 | 736,000.00 | | | | 736,000.00 |
| | $9,171,694.88 | $2,312,944.88 | $2,250,000.00 | $3,872,750.00 | $736,000.00 |

## Petitioner's Exhibit No. 57.

SUMMARY STATEMENT OF CASH ADVANCES BY F. B. PARRIOTT TO TRANSCONTINENTAL OIL CO. AND METHOD OF REPAYMENT

| Year | Total Cash Advanced | Total Repayments | Cash | Bonds | Capital Stock |
|---|---|---|---|---|---|
| 1920 | $ 66,000.00 | $ 66,000.00 | $ 66,000.00 | | |
| 1921* | 452,343.89 | 1,007,000.00 | 107,000.00 | $900,000.00 | |
| 1922 | 599,000.00 | 196,000.00 | 196,000.00 | | |
| 1923 | 845,916.50 | 35,000.00 | 35,000.00 | | |
| 1924 | 75,000.00 | 1,112,760.39 | 631,010.39 | | 481,750.00* |
| 1925 | ..... | 216,500.00 | | | 216,500.00† |
| | $2,633,260.39 | $2,633,260.39 | $1,035,010.39 | $900,000.00 | $698,250.00 |

* Preferred.
† Common.

## Petitioner's Exhibit No. 58.

SUMMARY STATEMENT OF OBLIGATIONS OF TRANSCONTINENTAL OIL CO. ON WHICH ENDORSEMENTS OF M. L. BENEDUM AND F. B. PARRIOTT APPEARED

| | | Notes Paid Off | | | | |
|---|---|---|---|---|---|---|
| | Total | 1921 | 1922 | 1923 | 1924 | 1925 |
| 1920..... | $ 775,000.00 | $ 10,000.00 | $250,000.00 | $ 150,500.00 | $ 114,000.00 | $ 250,500.00 |
| 1921..... | 647,500.00 | 200,000.00 | ..... | 75,500.00 | 364,500.00 | 7,500.00 |
| 1922..... | 3,178,500.00 | ..... | 551,000.00 | 932,500.00 | 562,500.00 | 1,132,500.00 |
| 1923..... | 1,574,056.44 | ..... | ..... | 416,000.00 | 455,056.44 | 463,000.00 |
| 1924..... | 1,167,505.54 | ..... | ..... | ..... | 227,422.54 | 1,180,083.00 |
| 1925..... | 77,750.00 | ..... | ..... | ..... | ..... | 77,750.00 |
| | $7,420,311.98 | $210,000.00 | $801,000.00 | $1,574,500.00 | $1,723,478.98 | $3,111,333.00 |

**Petitioner's Exhibit No. 59.**

## TRANSCONTINENTAL OIL COMPANY

### COMPARATIVE BALANCE SHEETS AT DATES INDICATED

| | (A) August 1, 1919 | (B) August 1, 1919 | December 31, 1919 | December 31, 1920 | December 31, 1921 | December 31, 1922 | December 31, 1923 | December 31, 1924 | December 31 1925 |
|---|---|---|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | | | | |
| Cash | $ 9,085,728.89 | $ 27,697.39 | $ 1,102,576.50 | $ 420,643.56 | $ 305,324.25 | $ 119,731.29 | $ 143,647.61 | $ 259,469.36 | $ 79,086. |
| Accounts Receivable | 378,772.39 | 39,774.63 | 638,104.61 | 1,665,066.48 | 3,282,014.50 | 1,077,101.59 | 899,376.58 | 1,141,472.60 | 924,768. |
| Notes Receivable | 11,529.72 | | 64,225.40 | 219,456.30 | 242,512.26 | 317,020.49 | 57,909.30 | 156,891.93 | 205,121. |
| Bankers' Subscription to Stock | | 9,377,115.00 | 2,200,000.00 | | | | | | |
| Inventories | 223,606.82 | 207,583.73 | 1,389,093.85 | 1,930,112.94 | 1,251,095.77 | 1,799,224.99 | 1,429,937.73 | 1,290,991.10 | 942,833. |
| Investments—Associated Companies | | | 2,075,000.00 | 3,329,356.88 | 3,529,610.43 | 4,481,402.10 | 4,827,742.20 | 5,048,534.28 | 1 811,800. |
| Investments—Other | | | | 850.00 | 375,000.00 | | | | |
| Advances, etc. — Associated Companies | | | 73,821.89 | 407,326.98 | 710,373.57 | | 41,301.54 | 120,226.77 | 97,790. |
| Reserve Funds | | | | 8,828.56 | 39,932.43 | 206,130.86 | 6,975.62 | 5,742.50 | 23,817. |
| Sinking Funds | | | | | | | | 465,000.00 | 810. |
| Treasury Stock | | | | 20,000.00 | 20,000.00 | 20,000.00 | 20,000.00 | 20,000.00 | |
| Property Acquired at Organization | 187,290,001.00 | 187,290,001.00 | 187,276,001.00 | 186,836,494.22 | 186,853,369.22 | 187,290,000.00 | 187,290,000.00 | 187,290,000.00 | |
| Property Acquired since Organization | | | 3,241,269.62 | 9,064,038.35 | 9,733,079.58 | 17,783,629.49 | 19,541,344.24 | 20,517,022.63 | 35,1 ,774.8 |
| Patent Rights and Trade Marks | | | 1,229.69 | 1,259.69 | 1,349.69 | 2,178.97 | 2,178.97 | 2,440.62 | 1,000 00.0 |
| Organization and Refinancing Expenses | | | 233,256.66 | 260,253.06 | 260,268.61 | 260,268.61 | 260,268.61 | 2,558,206.31 | |
| Deferred Charges | 3,425.20 | 3,200.93 | 79,717.99 | 166,470.10 | 233,142.51 | 424,069.47 | 340,998.59 | 170,740.10 | 197,0 3. |
| Property Rights Acquired through Issue of Preferred Stock | | | | | | | | 2,750,000.00 | |
| TOTAL ASSETS | $196,993,064.02 | $196,945,372.68 | $198,374,297.21 | $204,330,157.12 | $206,837,072.82 | $213,780,763.86 | $214,861,680.99 | $221,796,747.20 | $51,609,813.8 |
| **LIABILITIES AND CAPITAL** | | | | | | | | | |
| Accounts Payable | $ 69,964.41 | $ 490,470.29 | $ 1,047,827.58 | $ 1,747,390.11 | $ 1,703,017.87 | $ 1,351,263.34 | $ 1,295,845.22 | $ 1,150,763.44 | $ 1,06 ,664.3 |
| Notes and Acceptances Payable | 224,478.43 | | | 4,349,668.44 | 3,065,995.58 | 8,371,831.41 | 10,540,689.41 | 4,083,059.11 | 664, 14.6 |
| Accrued Expenses | 82,703.86 | | 59,026.30 | 94,792.23 | 71,209.63 | 166,917.97 | 204,602.59 | 313,269.44 | 249,9 2.2 |
| Tank Car Obligations | | | 316,400.00 | 586,482.14 | 707,291.78 | 873,349.42 | 280,907.00 | 1,595,800.00 | 1,036,0 8.9 |
| Real Estate Purchase Agreement | | | | 30,000.00 | 24,000.00 | 18,000.00 | 460,438.00 | 358,767.93 | 239,986.2 |
| Reserves | | | | 54,761.13 | 50,868.26 | 179,970.98 | 113,154.62 | 131,085.91 | 23,735.7 |
| Five Year 7% Gold Notes | | | | | | | | | 4,000,000.0 |
| First Mortgage 8% Gold Bonds | | | | | 6,650,000.00 | 7,000,000.00 | 8,657,000.00 | 2,000,000.00 | 1,909,000.0 |
| First Mortgage 6½% Gold Bonds | | | | | | | | | |
| Due to Associated Companies | | | | | | 155,765.89 | | | |
| Contingent Liabilities† | | | | | | 2,119,405.67 | 1,628,009.15 | 1,313,918.50 | 983,396.2 |
| Preferred Capital Stock | | | | | | | | 15,750,000.00 | 15,750,000.0 |
| Common Capital Stock | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 24,898,094.1 |
| Capital Surplus | 196,615,916.32 | 196,454,901.39 | 196,772,081.90 | 196,772,854.22 | 196,772,855.22 | 196,813,673.26 | 196,813,673.26 | 201,354,482.76 | |
| Earned Surplus | | | 178,960.43 | 694,207.85 | 2,208,166.52* | 3,269,415.08* | 5,632,636.32* | 6,254,400.89* | 792,580.9 |
| TOTAL LIABILITIES AND CAPITAL | $196,993,064.02 | $196,945,372.68 | $198,374,297.21 | $204,330,157.12 | $206,837,072.82 | $213,780,763.86 | $214,861,680.99 | $221,796,747.20 | $51,609,813.8 |

(A) As filed with application for listing on Stock Exchange.
(B) As prepared from records of Pittsburgh-Texas Oil and Gas Company.
* Deficit.

**Petitioner's Exhibit No. 59.**

## TRANSCONTINENTAL OIL COMPANY

### COMPARATIVE BALANCE SHEETS AT DATES INDICATED

| cember 1, 1920 | December 31, 1921 | December 31, 1922 | December 31, 1923 | December 31, 1924 | December 31, 1925 | December 31, 1926 | December 31, 1927 | December 31, 1928 | December 31, 1929 | December 20, 1930 |
|---|---|---|---|---|---|---|---|---|---|---|
| 20,643.56 | $ 305,324.25 | $ 119,731.29 | $ 143,647.61 | $ 259,469.36 | $ 479,086.24 | $ 575,088.18 | $ 1,104,942.15 | $ 3,394,196.90 | $ 8,722,574.72 | $ 6,553,123.76 |
| 65,066.48 | 3,282,014.50 | 1,077,101.59 | 899,376.58 | 1,141,472.60 | 1,024,768.40 | 771,299.72 | 480,678.12 | 1,314,699.07 | 1,391,661.28 | 1,430,418.68 |
| 19,456.30 | 242,512.26 | 317,020.49 | 57,909.30 | 156,891.93 | 205,121.42 | 64,638.94 | 27,374.42 | 52,575.83 | 71,053.42 | 110,157.40 |
| 30,112.94 | 1,251,095.77 | 1,799,224.99 | 1,429,937.73 | 1,290,991.10 | 1,942,833.42 | 2,366,456.07 | 3,014,134.36 | 2,347,603.43 | 2,003,742.70 | 2,320,897.41 |
| 29,356.88 | 3,529,610.43 | 4,481,402.10 | 4,827,742.20 | 5,048,534.28 | 10,811,800.78 | 11,444,753.35 | 12,978,298.76 | 13,493,155.66 | 14,048,268.16 | 14,107,756.61 |
| 850.00 | 375,000.00 | | | | | 2,000.00 | 26,730.06 | 19,983.29 | 143,302.72 | 169,864.89 |
| 07,326.98 | 710,373.57 | | 41,301.54 | 120,226.77 | 797,790.51 | | | | | |
| 8,828.56 | 39,932.43 | 206,136.86 | 6,975.62 | 5,742.50 | 23,817.80 | 43,276.15 | 63,957.91 | 79,350.06 | 101,597.29 | 113,697.02 |
| | | | | 465,000.00 | 810.00 | 2,988.73 | 865.00 | 31,450.00 | 44,277.63 | 64,048.76 |
| 20,000.00 | 20,000.00 | 20,000.00 | 20,000.00 | 20,000.00 | | | | | 505,200.00 | 533,503.79 |
| 36,494.22 | 186,853,369.22 | 187,290,000.00 | 187,290,000.00 | 187,290,000.00 | 35,126,771.84 | 36,210,777.60 | 35,567,091.20 | 35,892,424.34 | 35,822,481.52 | 38,346,913.87 |
| 64,038.35 | 9,733,079.58 | 17,783,629.49 | 19,541,344.24 | 20,517,022.63 | | | | | | |
| 1,259.69 | 1,349.69 | 2,178.97 | 2,178.97 | 2,449.62 | 1,000,000.00 | 1,000,000.00 | 1,000,000.00 | 1,000,000.00 | 1,000,000.00 | 1,000,000.00 |
| 30,253.06 | 260,268.61 | 260,268.61 | 260,268.61 | 2,558,206.31 | | | | | | |
| 36,470.10 | 233,142.51 | 424,069.47 | 310,998.59 | 170,740.10 | 197,010.39 | 218,797.66 | 186,672.36 | 1,399,869.19 | 1,351,466.35 | 166,081.04 |
| | | | | 2,750,000.00 | | | | | | |
| 30,157.12 | $206,837,072.82 | $213,780,763.86 | $214,861,680.99 | $221,796,747.20 | $51,609,813.80 | $52,700,076.40 | $54,450,944.34 | $59,025,308.07 | $65,205,625.79 | $64,916,463.23 |
| 47,390.11 | $ 1,703,017.87 | $ 1,351,263.34 | $ 1,295,845.22 | $ 1,150,763.44 | $ 1,062,664.51 | $ 880,778.77 | $ 1,168,003.39 | $ 688,553.29 | $ 961,631.00 | $ 1,351,326.13 |
| 19,668.44 | 3,065,995.58 | 8,371,831.41 | 10,540,689.41 | 4,083,059.11 | 664,314.62 | 1,125,537.20 | 3,743,134.74 | | | |
| 04,792.23 | 71,209.63 | 166,917.97 | 204,602.59 | 313,269.44 | 249,972.29 | 263,944.07 | 278,983.18 | 551,724.02 | 261,142.70 | 326,373.72 |
| 36,482.14 | 707,291.78 | 873,349.42 | 280,907.06 | 1,595,800.00 | 1,036,068.99 | 831,507.24 | 628,700.00 | 1,134,000.00 | 1,002,000.00 | 936,000.00 |
| 30,000.00 | 24,000.00 | 18,000.00 | 460,438.00 | 358,767.93 | 239,986.25 | 104,000.00 | 4,000.00 | 10,652.54 | 1,000.00 | |
| 54,761.13 | 50,868.26 | 179,970.98 | 113,151.62 | 131,085.91 | 23,735.75 | 144,870.05 | 111,019.74 | 116,305.61 | 455,826.25 | 365,277.21 |
| | | | | | 4,000,000.00 | 4,000,000.00 | 4,000,000.00 | | | |
| | 6,650,000.00 | 7,000,000.00 | 8,657,000.00 | 2,000,000.00 | 1,909,000.00 | 1,821,000.00 | 1,736,000.00 | | | |
| | | | | | | | | 12,000,000.00 | 11,745,000.00 | 11,238,000.00 |
| | | 155,765.89 | | | | 189,822.21 | 623,688.55 | 970,024.52 | 872,742.29 | 808,195.69 |
| | | 2,119,405.67 | 1,628,009.15 | 1,313,918.50 | 983,396.25 | 688,638.65 | 528,183.76 | 419,294.67 | | 399,800.00 |
| | | | | 15,750,000.00 | 15,750,000.00 | 15,750,000.00 | 15,750,000.00 | 15,750,000.00 | | |
| 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 24,898,094.19 | 24,898,094.19 | 24,898,094.19 | 25,256,212.94 | 40,337,900.00 | 40,346,726.00 |
| 72,854.22 | 196,772,855.22 | 196,813,673.26 | 196,813,673.26 | 201,354,482.76 | | | | | 2,715,852.99 | 2,759,538.27 |
| 04,207.85 | 2,208,166.52* | 3,269,415.08* | 5,632,636.32* | 6,254,400.89* | 792,580.95 | 2,001,883.98 | 981,136.79 | 2,128,540.48 | 6,852,530.66 | 6,385,226.21 |
| 30,157.12 | $206,837,072.82 | $213,780,763.86 | $214,861,680.99 | $221,796,747.20 | $51,609,813.80 | $52,700,076.40 | $54,450,944.34 | $59,025,308.07 | $65,205,625.79 | $64,916,463.23 |

(A) As filed with application for listing on Stock Exchange.
(B) As prepared from records of Pittsburgh-Texas Oil and Gas Company.
* Deficit.

## Petitioner's Exhibit No. 60.

Map covering Texas and Oklahoma, showing the general region in which acreage acquired by Transcontinental was located.

(See folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 61.

Small map showing relative location of Breckenridge, Ranger and Duke pools.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 62.

LEASES COMPRISING THE DUKE-KNOWLES BLOCK OF THE TEX-PENN OIL COMPANY

| No. | Name of Lease | Acres | Term* | Date |
|---|---|---|---|---|
| 97 | Davenport, M. P. | 202.5 | 3 years | 12-21-17 |
| 97-A | Cullum, L. H. | | 5 " | 4-29-18 |
| 97-B | Cunningham, Mary A. | | 5 " | 9-19-18 |
| 97-C. | Cunningham, Mary A., guardian | | 2-5 " | 12- 7-18 |
| 97-D | Cunningham, T. H. | | 5 " | 11-13-18 |
| 98 | Duke, J. N. | 260 | 5 " | 1- 1-18 |
| 99 | Snodgrass, S. E. | 107 | 3 " | 12-21-17 |
| 100 | Payne, Louella | 116 | 3 " | 12-21-17 |
| 101 | Knowles, Geo. W. | 80 | 3 " | 12-21-17 |
| 102. | Peak, M. C. | 198 | 5 " | 1- 1-18 |
| 103 | Peak, S. T. | 110 | 5 " | 1- 1-18 |
| 104 | Moorman, C. T. | 100 | 3 " | 12-21-17 |
| 105 | Moorman, C. C. | 60 | 3 " | 12-21-17 |
| 106 | Sherer, L. C. | 60.5 | 3 " | 12-21-17 |
| 107 | Davenport, L. R. | 75 | 3 " | 12-21-17 |
| 108 | Guthery, J. A. | 135 | 3 " | 12-21-17 |
| 109 | Koonce, W. N. | 375 | 3 " | 9- 9-18 |
| 110 | Parner, J. R. | 80 | 3 " | 12-21-17 |
| 111 | Brown, J. A. | 53 | 3 " | 12-21-17 |
| 112 | Varner, William | 100 | 3 " | 12-21-17 |
| 112-A | Ellison, R. C. | 100 | 2 " | 12-12-18 |
| 113 | Cox, M. M. | 80 | 3 " | 12-21-17 |
| 114 | Logsdon, J. H. | 100 | 3 " | 12-21-17 |
| 115 | Northcutt, J. T. | 50 | 3 " | 12-21-17 |
| 116 | Gregory, W. R. | 48 | 5 " | 1- 1-18 |
| 117 | Merrick, E. S. | 87.5 | 3 " | 12-21-17 |
| 118 | Short, J. W. | 160 | 3 " | 12-21-17 |
| 119 | Burton, W. C. | 104 | 5 " | 12-21-17 |
| 120 | Robbins, O. S. | 103.6 | 5 " | 12-21-17 |
| 121 | White, L. E. | 100 | 3 " | 12-21-17 |
| 122 | Hooper, Mary J., widow | 96 | 3 " | 12-21-17 |
| 122-A | Hooper, Mary J., guardian | | 3-5 " | 10- 8-18 |
| 122-B | Hobbs, J. T. | | 5 " | 9-17-18 |
| 123 | Graham, J. D. | 25 | 3 " | 12-21-18 |
| 124 | Davenport, M. P. | 81 | 3 " | 12-21-18 |
| 125 | Pearson, W. F. | 100 | 5 " | 2-13-18 |
| 126 | Crowell, G. W. | 80 | 5 " | 3-15-18 |
| 127 | Gillock, Eugene | 72 | 5 " | 5- 2-18 |
| | | 3,499.1 | | |

* Term—"and as much longer as oil or gas is produced in paying quantities."

**Petitioner's Exhibit No.**

WELL RECORD—DESDEMON

Symbols Indicate Source of M

RESULT OF DRILLING AT DESDEMONA PRIOR

◆ Profitable well
◆ Unprofitable well

| Our No. | Class | Area | Company | Farm Name | Well No. | Date of Completion | Depth | Sand Record | Initial Production (Barrels) | Producti May, 19 (Barrel |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | ◆ | A | Tex-Penn Oil Company | J. N. Duke | 1 | 9- 2-1918## | 2685¢ | 2664-2685¢ | 600## | 6 |
| 2 | ◆ | A | " " " " | G. W. Knowles | 1 | 12-28-1918## | 2750* | 2734-2750* | 5,800* | 200 |
| 3 | ◆ | A | Magnolia Petroleum Company | J. N. Duke | 1 | 1- 4-1919## | 2706¢ | 2654-2665¢ | 1,000* | 700 |
| 4 | ◆ | B | Skelly & Sankey | F. D. Hogg | 1 | 1- 6-1919¢ | 2770* | 2660-2695* | 125¢ | 500 |
| 5 | | A | Tex-Penn Oil Company | N. E. Payne | 1 | 2- 2-1919## | 2690¢ | 2688-2690¢ | 30,000,000 cu. ft gas¢ | 35,000,000 cu |
| 6 | ◆ | A | Magnolia Petroleum Company | J. H. Woodward | 1 | 2- 6-1919## | 2825* | 2783-2797¢ | 7## | 7 |
| 7 | | A | Tex-Penn Oil Company | S. E. Snodgrass | 1 | 2-19-1919## | 2620* | 2617-2620* | 15,000,000 cu. ft gas¢ | 20,000,000 cu |
| 8 | ◆ | B | Magnolia Petroleum Company | E. S. Davis | 1 | 2-21-1919## | 2998¢ | 2732-2753¢ | 12¢ | 15 |
| 9 | ◆ | A | Leon Valley Oil Company | J. H. Haynes | 1 | 2-26-1919¢ | 2790¢ | 2768-2775¢ | 60* | 60 |
| 10 | ◆ | B | Plains Oil and Gas Company | J. D. Herrington | 1 | 3-14-1919## | 2750* | 2687-2693¢ | 400## | 200 |
| 11 | ◆ | B | Magnolia Petroleum Company | L. C. Odle | 1 | 3-27-1919## | 2755¢ | 2656-2661¢ | 200## | 50 |
| 12 | ◆ | A | Gates Oil Company | M. B. Hilley | 1 | 3-31-1919¢ | 3610* | D. and A.* | | |
| 13 | ◆ | — | Ohio Fuel Oil Company | Josephine Herrington | 1 | 4-12-1919¢ | 3710* | 3108-3141* | 90* | 90 |
| 14 | ◆ | B | Sinclair Consolidated Oil Co. | F. D. Hogg | 1 | 4-19-1919¢ | 2695* | 2685-2695* | 3,500* | 1,300 |
| 15 | ◆ | B | Peerless Oil Company | J. T. Carruth | 2 | 4-19-1919¢ | 2707¢ | | 30¢ | |
| 16 | ◆ | B | Waxahachie Oil Company | W. Thompson | 1-A | 4-20-1919¢ | 2690* | 2640-2650¢ | 70* | 45 |
| 17 | | B | Cosden Oil and Gas Company | J. T. Carruth | 1 | 4-20-1919¢ | | 2671- ¢ | 72,800,000 cu. ft gas* | 72,800,000 cu |
| 18 | ◆ | B | Humble Oil and Refining Co. | Dick Gray | 1 | 4-21-1919¢ | 2730¢ | 2637-2648* | 400* | 12 |
| 19 | ◆ | A | Gilliland Oil Company | Zula Lynn | 1 | 4-21-1919¢ | 2819* | 2762-2804* | 30¢ | 25 |
| 20 | ◆ | B | Skelly & Sankey | F. D. Hogg | 2 | 4-22-1919¢ | 2755* | 2678-2739* | 600* | 650 |
| 21 | ◆ | A | Sun Company | J. H. Mahon | 1 | 4-23-1919¢ | 2898* | 2882-2898* | 30* | 30 |
| 22 | ◆ | B | Wyandotte-Hogg Creek Oil Co. | W. Thompson | 1 | 4-27-1919¢ | 2850¢ | 2633-2638¢ | 15¢ | 5 |
| 23 | ◆ | B | Sinclair Consolidated Oil Co. | F. D. Hogg | 3 | 4-28-1919¢ | 2754* | 2729-2754* | 45* | 10 |
| 24 | ◆ | A | Phoenix Oil Company | W. C. Clayton | 1 | 4-30-1919¢ | 3129* | 3100-3120* | 75* | 30 |
| 25 | ◆ | A | Gilliland Oil Company | Stockton | 1 | 4-30-1919¢ | 2819* | 2762-2804* | 7,000,000 cu. ft gas* | 25 |
| 26 | ◆ | B | Aquarre & Connelly | Eppler | 1 | 4- -1919* | 3502* | 2849-2855* | 50* | |
| 27 | ◆ | A | Plains Oil and Gas Company | Stockton | 1 | 5- 3-1919¢ | 2935¢ | 2638-2663* | 40¢ | 20 |
| 28 | ◆ | B | Magnolia Petroleum Company | J. D. Moorehead | 1 | 5- 4-1919## | 2764* | 2740-2764* | 600* | 500 |
| 29 | ◆ | B | Plains Oil and Gas Company | J. D. Herrington | 2 | 5- 6-1919## | 2720¢ | 2710- ## | 300## | 300 |
| 30 | ◆ | A | Crescent Oil Company | Pearson | 1 | 5- 9-1919¢ | 2985* | D. and A.* | | |
| 31 | ◆ | A | R. O. Harvey et al. | Russell-Ballard | 1 | 5-11-1919¢ | 3085¢ | 3050-3071¢ | 18¢ | Pumpin |
| 32 | ◆ | B | Skelly & Sankey | F. D. Hogg | 3 | 5-12-1919¢ | 2765* | 2700-2763* | 500* | 30 |
| 33 | ◆ | B | Magnolia Petroleum Company | C. T. Terrell | 1 | 5-12-1919## | 2701¢ | -2694## | 5,000## | 4,300 |
| 34 | ◆ | B | Peerless Oil Company | J. T. Carruth | 1 | 5-14-1919¢ | 2708* | 2688-2699* | 3,500* | 700 |
| 35 | ◆ | — | Magnolia Petroleum Company | J. M. Sparks | 1 | 5-14-1919## | | 2858-2880* | 70## | |
| 36 | ◆ | — | F. C. Henderson | Mrs. H. B. Kee | 1 | 5-17-1919¢ | 3402* | D. and A.* | | |
| 37 | ◆ | — | Beard & Link | Fleming | 1 | 5-17-1919¢ | 2900* | 2737-2776* | 60* | 60 |
| 38 | ◆ | A | The Texas Company | J. B. Wilson | 1 | 5-17-1919¢ | 2860¢ | 2842-2850¢ | 45¢ | 10 |
| 39 | ◆ | — | Lucky Six Oil Company | C. L. Tolar (Parks) | 1 | 5-18-1919¢ | 3080* | D. and A.** | | |
| 40 | ◆ | A | Skelly & Sankey | Pearson | 1 | 5-19-1919¢ | 2935¢ | D. and A.** | | |
| 41 | ◆ | B | Waxahachie Oil Company | W. Thompson | 2-A | 5-20-1919¢ | 2712* | 2640-2712* | 250* | |
| 42 | ◆ | B | Magnolia Petroleum Company | J. B. Foote | 1 | 5-26-1919## | 2875* | 2672-2676* | 112* | 66 |
| 43 | ◆ | B | Skelly & Sankey | F. D. Hogg | 4 | 5-27-1919¢ | 2705* | 2700-2765* | 500* | 85 |
| 44 | ◆ | A | R. O. Harvey et al. | W. M. Braswell | 1 | 5-27-1919¢ | 3130¢ | 2890-2925¢ | 10* | Pumpin |

**Petitioner's Exhibit No. 63.**

## RECORD—DESDEMONA POOL

bols Indicate Source of Material

LING AT DESDEMONA PRIOR TO AUGUST 1, 1919

Data from National Petroleum News of May 21, 1919 was taken from a tabulation supplementing an article beginning on page 45.

Data from National Petroleum News of July 16, 1919 was taken from a tabulation supplementing an article beginning on page 46.

Data from National Petroleum News of December 24, 1919 was taken from a tabulation extending from page 65 to page 73.

| Initial Production (Barrels) | Production May, 1919 (Barrels) | Production July, 1919 (Barrels) | Production Dec., 1919 (Barrels) | Source of Information | Our No. |
|---|---|---|---|---|---|
| | | | | *National Petroleum News: **Oil Weekly: #Oil and Gas Journal: ##Owner's records: ¢David Donoghue | |
| 600## | 6* | 6* | | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19 | 1 |
| 5,800* | 200* | 600* | | Owner's records: NPX 5/21/19; 7/16/19; 12/24/19 | 2 |
| 1,000* | 700* | 80* | | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 3 |
| 125¢ | 500* | 80* | | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 4 |
| 0,000,000 cu. ft gas¢ | 35,000,000 cu. ft gas* | 35,000,000 cu. ft. gas* | | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19 | 5 |
| 7## | 7* | 7* | | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 6 |
| 5,000,000 cu. ft gas¢ | 20,000,000 cu. ft gas* | 25,000,000 cu. ft. gas* | | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 7 |
| 12¢ | 15* | 17* | 10* | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 8 |
| 60* | 60* | 50* | 10* | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 9 |
| 400## | 200* | | | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19; 12 24/19 | 10 |
| 200## | 50* | 1* | | Owner's records: David Donoghue: NPX 5/21/19; 7/16/19 | 11 |
| | | | | David Donoghue: NPX 12/24/19 | 12 |
| 90* | 90* | 80* | | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 13 |
| 3,500* | 1,300* | 195* | | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 14 |
| 30¢ | | | | David Donoghue | 15 |
| 70* | 45** | 30** | | David Donoghue: NPX 12/24/19; OW 6/7/19; 7/26/19 | 16 |
| 2,800,000 cu. ft gas* | 72,800,000 cu. ft gas* | (For completion as oil well see after No. 132) | | David Donoghue: NPX 5/21/19 | 17 |
| 400* | 12* | 45* | | David Donoghue: NPX 5/21/19; 7/16/19 | 18 |
| 30¢ | 25* | 5* | | David Donoghue: NPX 5/21/19; 7/16/19 | 19 |
| 600* | 650* | | | David Donoghue: NPX 5/21/19; 12/24/19 | 20 |
| 30* | 30* | 25* | 6* | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 21 |
| 15¢ | 5** | 5* | Not producing* | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19; OW 6/7/19 p. 24 | 22 |
| 45* | 10** | 10* | | David Donoghue: NPX 7/16/19; 12/24/19; OW 6/7/19 p. 24 | 23 |
| 75* | 30* | 12* | 5 | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 24 |
| 7,000,000 cu. ft gas* | 25* | 5* | 5 | David Donoghue: NPX 5/21/19; 7/16/19 | 25 |
| 50* | | | 5 | NPX 7/16/19; 12/24/19 | 26 |
| 40¢ | 20* | | | David Donoghue: NPX 5/21/19; 7/16/19 | 27 |
| 600* | 500* | 225* | 5 | Owner's records: NPX 5/21/19; 6/16/19; 12/24/19 | 28 |
| 300## | 300* | 100* | | Owner's records: David Donoghue: NPX 7/16/19; OW 6/7/19 p. 24 | 29 |
| | | | | David Donoghue; NPX 12/24/19 | 30 |
| 18¢ | Pumping* | | Not producing* | David Donoghue: NPX 5/21/19; 12/24/19 | 31 |
| 500* | 30** | | | David Donoghue: NPX 12/24/19: OW 6/7/19 p. 24; 7/26/19 | 32 |
| 5,000## | 4,200* | | | Owner's records: David Donoghue: NPX 5/21/19 | 33 |
| 3,500* | 700* | 400* | 10* | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 34 |
| 70## | | 37* | | Owner's records: NPX 7/16/1919 | 35 |
| | | | | David Donoghue: NPX 12/21/1919 | 36 |
| 60* | 60* | | | David Donoghue: NPX 5/21/19 | 37 |
| 45¢ | 10* | 10* | | David Donoghue: NPX 7/16/19; OW 6/7/19 p. 24 | 38 |
| | | | | David Donoghue: NPX 12/24/19: OW 5/31/19 | 39 |
| | | | | David Donoghue: OW 5/31/19 | 40 |
| 250* | | 15* | | David Donoghue: NPX 12/24/19: OW 7/26/19 | 41 |
| 112* | 66* | 20* | | Owner's records: NPX 5/21/19; 7/16/19 | 42 |
| 500* | 85** | 125* | | David Donoghue: NPX 7/16/19; 12/24/19; OW 6/7/19 p. 24 | 43 |
| 10* | Pumping* | | Abandoned* | David Donoghue: NPX 5/21/19; 7/16/19; 12/24/19 | 44 |

**Petitioner's Exhibit No. 63 (contin**

◆ Profitable well
⊗ Unprofitable well

| Our No. | Class | Area | Company | Farm Name | Well No. | Date of Completion | Depth | Sand Record | Initial Production (Barrels) | Production May, 1919 (Barrels) |
|---|---|---|---|---|---|---|---|---|---|---|
| 45 | ⊗ | A | Union Prod. Company | W. F. Pearson | 1 | 5-27-1919¢ | 2884¢ | 2767-2812¢ | D. and A.¢ | |
| 46 | ◆ | B | Sinclair Consolidated Oil Co. | F. D. Hogg | 2 | 5-29-1919¢ | 2755* | 2678-2732* | 430* | 400** |
| 47 | ⊗ | A | Del-Tex Oil Company | Zula Lynn | 1 | 5- -1919* | 2895* | 2610-2660* | 5* | 5** |
| 48 | ⊗ | A | Duke-Dome Oil Company | Pearson | 1 | 5- -1919* | 3090* | D. and A.* | | |
| 49 | ⊗ | A | Black Lime Oil Company | C. H. Hodge | 1 | 5- -1919* | 3000* | D. and A.* | | |
| 50 | ⊗ | A | Duke Consolidated Oil Company | J. H. Haynes | 1 | 5- -1919* | 2900* | 2712-2716* | 25* | |
| 51 | ⊗ | A | Southwest Oil Company | Zula Lynn | 1 | 5- -1919* | 2863* | 2725-2748* | 5* | 5** |
| 52 | ⊗ | A | " " " | Pearson | 1 | 5- -1919* | 2810* | 2785-2810* | 10* | |
| 53 | ⊗ | A | Cosden Oil and Gas Company | Stockton | 1 | 5- -1919# | 3250# | 2754-59 and 2810-15* | 40* | 20* |
| 54 | | B | Selby Oil and Gas Company | Carruth | 1 | 5- -1919¢ | | 2687-2726¢ | 25,000,000 cu. ft. gas¢ | |
| 55 | ◆ | B | Gulf Production Company | Prater-Grice | 1 | 6- 2-1919¢ | 2712¢ | 2686-2712¢ | 1,800* | |
| 56 | ⊗ | A | Tex-Penn Oil Company | G. W. Knowles | 3 | 6- 3-1919## | 2730¢ | 2705-2728** | 100## | |
| 57 | ⊗ | B | Plains Oil and Gas Company | J. D. Herrington | 4 | 6- 4-1919## | 2740* | 2658-2683* | 150* | 150** |
| 58 | ◆ | B | Dixie Oil and Refining Company | Hamilton | 1 | 6- 6-1919¢ | | 2670-2679* | 2,700* | |
| 59 | ⊗ | A | Tex-Penn Oil Company | G. W. Crowell | 2 | 6- 4-1919## | 2655¢ | 2610- ## | 25## | |
| 60 | | B | " " " " | G. W. Crowell | 1 | 6- 6-1919## | 2641* | 2603-2608* | 10,000,000 cu. ft. gas* | |
| 61 | ⊗ | A | " " " " | J. N. Duke | 2 | 6- 7-1919## | 2696* | 2683-2696* | 120## | |
| 62 | ⊗ | B | Plains Oil and Gas Company | J. D. Herrington | 3 | 6- 8-1919## | 2724* | 2662-2721* | 200* | |
| 63 | ◆ | A | Southland Oil Company | H. H. Vaught | 1 | 6- 9-1919¢ | 2600¢ | 2570-2573¢ | 400¢ | 125** |
| 64 | ⊗ | A | Tex-Penn Oil Company | J. N. Duke | 3 | 6- 9-1919## | 2727## | 2702-2727* | 130* | |
| 65 | ⊗ | B | Waxahachie Oil Company | W. Thompson | 3-A | 6- 9-1919¢ | | 2687-2700¢ | 50¢ | |
| 66 | ⊗ | A | Comanche Central Oil Company | Mary Parker | 1 | 6- 9-1919¢ | 3000¢ | D. and A.¢ | | |
| 67 | ◆ | B | Magnolia Petroleum Company | W. M. Echols | 1 | 6-12-1919## | 2716* | 2710-2716* | 8,000* | |
| 68 | ⊗ | A | Producers and Refiners Corp. | C. H. Hodge | 1 | 6-16-1919¢ | 3357* | Abandoned* | | |
| 69 | ⊗ | B | Cattlemens-Hogg Creek Oil Co. | N. O. Beardon | 1 | 6-18-1919¢ | 2704¢ | 2636-2642¢ | 150¢ | |
| 70 | ⊗ | — | Jefferson Oil Association | J. M. Mowell | 1 | 6-23-1919¢ | 2800¢ | 2742-2749¢ | 15¢ | |
| 71 | ⊗ | B | Jack Sankey | Hogg | 1 | 6-23-1919¢ | 2720¢ | 2705-2719¢ | 200¢ | |
| 72 | ◆ | A | Tex-Penn Oil Company | G. W. Knowles | 2 | 6-25-1919## | 2812* | 2754-2774* | 530* | |
| 73 | ◆ | B | Humble Oil and Refining Co. | Dick Gray | 2 | 6-29-1919## | 2634¢ | 2605-2624* | 400* | |
| 74 | ◆ | B | J. E. Crosby et al. | Ed Putty | 1 | 6-30-1919¢ | 2730¢ | 2705-2720¢ | 400¢ | |
| 75 | ◆ | B | Royal Duke Oil Company | J. E. Smith | 1 | 6-30-1919¢ | 2850¢ | 2758-2777* | 300¢ | |
| 76 | ◆ | B | Union Prod. Company | Katy May | 1 | 6-30-1919¢ | 2835¢ | 2756-2770¢ | 360* | |
| 77 | ⊗ | B | Duke Extension Oil Company | J. T. Carruth | 1 | 6- -1919* | 2710¢ | 2670- * | 75* | 75* |
| 78 | ◆ | B | Union Oil and Refining Co. | Townsite | 2 | | 2735* | 2722-2735* | 600** | |
| 79 | ⊗ | A | The Petroleum Company | Pearson | 1 | 6- -1919¢ | 3125¢ | D. and A.¢ | | |
| 80 | | B | Sinclair Consolidated Oil Co. | F. D. Hogg | 5 | 6- -1919* | 2852* | 2528-2552* | 35,000,000 cu. ft. gas* | |
| 81 | | B | Central Texas Oil Company | Carruth heirs | 1 | 6- -1919* | 2721* | 2682-2695¢ | 20,000,000 cu. ft. gas* | 20,000,000 cu. ft. gas* |
| 82 | ⊗ | B | The Texas Company | Prater-Grice | 1 | 6- -1919* | 2730* | 2675-2710* | 20,000,000 cu. ft. gas* | 15* |
| 83 | ⊗ | B | Waxahachie Oil Company | W. Thompson | 4-A | 6- -1919* | 2787* | 2647-2687* | 25* | |
| 84 | ⊗ | B | Wyandotte-Hogg Creek Oil Co. | W. Thompson | 2 | 6- -1919* | 2732* | 2661-2672* | 10* | |
| 85 | ◆ | B | Sun Company | S. K. Shuler | 3 | 7- 3-1919¢ | 2763* | 2655-2663* | 6,000* | |
| 86 | ◆ | B | Magnolia Petroleum Company | C. T. Terrell | 2 | 7- 3-1919## | 2693* | 2660-2693* | 4,000## | |
| 87 | ⊗ | — | Union Oil Company | N. J. Cogburn | 1 | 7- 5-1919¢ | 3030* | 2815-2821* | D. and A.* | |
| 88 | ⊗ | A | Comanche Gusher Oil Company | J. C. Echols | 1 | 7- 5-1919¢ | 2900¢ | 2696-2716* | 15* | |
| 89 | ◆ | B | Ranger-Rock Island Oil Co. | N. A. Brown | 1 | 7- 5-1919¢ | 2800¢ | 2754-2800¢ | 500* | |
| 90 | ◆ | B | Union Oil and Refining Company | J. M. Mathews | 1 | 7- 5-1919¢ | 2735¢ | 2722-2735¢ | 1,800¢ | |
| 91 | ⊗ | B | Sun Company | S. K. Shuler | 1 | 7- 5-1919¢ | 2732¢ | 2726-2732¢ | 240¢ | |
| 92 | ◆ | B | Mid-Kansas Oil and Gas Company | P. J. Dabney | 2 | 7- 6-1919¢ | 2736* | 2728-2734¢ | 1,000¢ | |
| 93 | ◆ | B | The Texas Company | Prater-Grice | 3 | 7- 6-1919¢ | 2675¢ | 2665-2675¢ | 2,660¢ | |
| 94 | ⊗ | B | Marigold Oil Company | Hogg | 1 | 7- 8-1919¢ | 2750# | 2655-2720¢ | 250# | |
| 95 | ⊗ | B | Warren Wagner | B. I. Terry | 2 | 7-10-1919¢ | 2664¢ | 2655-2664¢ | 200¢ | |
| 96 | ⊗ | A | Comanche Northern Oil Company | Pearson | 1 | 7-10-1919¢ | 2929* | D. and A.* | | |

## ...tioner's Exhibit No. 63 (continued).

| Initial Production (Barrels) | Production May, 1919 (Barrels) | Production July, 1919 (Barrels) | Production Dec., 1919 (Barrels) | Source of Information | Our No. |
|---|---|---|---|---|---|
| | | | | *National Petroleum News: **Oil Weekly: #Oil and Gas Journal: ##Owner's records: cDavid Donoghue | |
| D. and A.c | | | | David Donoghue | 45 |
| 430* | 400** | 102* | | David Donoghue: NPN 7/16/19; 12/24/19: OW 6/7/19 p. 24 | 46 |
| 5* | 5** | 10** | Not producing* | NPN 7/16/19; 12/24/19: OW 6/7/19 p. 24; 7/26/19 | 47 |
| | | | | NPN 12/24/19 | 48 |
| | | | | NPN 12/24/19 | 49 |
| 25* | | 25* | | NPN 7/16/19; 12/24/19 | 50 |
| 5* | 5** | | Not producing* | NPN 12/24/19: OW 6/7/19 p. 24 | 51 |
| 10* | | | Not producing* | NPN 7/16/19 | 52 |
| 2810-15* 40* | 20* | | Not producing* | NPN 5/21/19; 7/16/19; 12/24/19: O&GJ 6/6/19 p. 16 | 53 |
| 25,000,000 cu. ft. gasc | | | | David Donoghue | 54 |
| 1,800* | | 4,000* | | David Donoghue: NPN 7/16/19; 12/24/19 | 55 |
| 100## | | 172** | | Owner's records: OW 6/7/19 p. 24; 7/26/19 | 56 |
| 150* | 150** | 75* | | Owner's records: NPN 7/16/19; 12/24/19: OW 6/7/19 p. 24 | 57 |
| 2,700* | | 2,000* | 450* | David Donoghue: NPN 7/16/19; 12/24/19 | 58 |
| 25## | | | | Owner's records: David Donoghue | 59 |
| 10,000,000 cu. ft. gas* | | 10,000,000 cu. ft. gas* | | Owner's records: NPN 7/16/19; 12/24/19 | 60 |
| 120## | | 100* | | Owner's records: NPN 7/16/19; 12/24/19 | 61 |
| 200* | | 75* | | Owner's records: NPN 7/16/19; 12/24/19 | 62 |
| 400c | 125** | 200* | | David Donoghue: NPN 7/16/19: OW 6/7/19 p. 24 | 63 |
| 130* | | 50* | | Owner's records: NPN 12/24/19 | 64 |
| 50c | | | | David Donoghue | 65 |
| | | | | David Donoghue | 66 |
| 8,000* | | 6,200* | | Owner's records: NPN 7/16/19; 12/24/19 | 67 |
| 150c | | 275* | | David Donoghue: NPN 5/21/19: O&GJ 5/23/19 p. 4 | 68 |
| 15c | | | 10* | David Donoghue: NPN 7/16/19 | 69 |
| 200c | | | | David Donoghue: NPN 12/24/19 | 70 |
| 530* | | 200* | | David Donoghue | 71 |
| 400* | | 250* | | Owner's records: NPN 7/16/19; 12/24/19 | 72 |
| 400c | | 480* | | Owner's records: David Donoghue: NPN 7/16/19 | 73 |
| 300c | | 75* | | David Donoghue: NPN 7/16/19 | 74 |
| 300* | | 150* | | David Donoghue: NPN 7/16/19; 12/24/19 | 75 |
| 75* | 75* | 75* | 5* | David Donoghue: NPN 7/16/19 | 76 |
| 600** | | 400** | | David Donoghue: NPN 5/21/19; 7/16/19; 12/24/19 | 77 |
| | | | | NPN 12/24/19; OW 6/7/19 p. 16 | 78 |
| 35,000,000 cu. ft. gas* | | 20,000,000 cu. ft. gas* | | David Donoghue | 79 |
| 20,000,000 cu. ft. gas* | 20,000,000 cu. ft. gas* | 10,000,000 cu. ft. gas* | | NPN 7/16/19; 12/24/19 | 80 |
| 20,000,000 cu. ft. gas* | 15* | | | David Donoghue: NPN 5/21/19; 7/16/19; 12/24/19 | 81 |
| 25* | | None** | 10* | NPN 5/21/19; 7/16/19; 12/24/19 | 82 |
| 10* | | 10** | Not producing* | NPN 12/24/19: OW 7/26/19 | 83 |
| 6,000* | | 2,000* | | NPN 12/24/19: OW 7/26/19 | 84 |
| 4,000## | | 3,500* | | NPN 7/16/19; 12/24/19 | 85 |
| D. and A.* | | | | Owner's records: NPN 7/16/19 | 86 |
| 15* | | | 5* | David Donoghue: NPN 7/16/19; 12/24/19 | 87 |
| 500* | | | | David Donoghue: NPN 12/24/19 | 88 |
| 1,800c | | | | David Donoghue: NPN 12/24/19 | 89 |
| 240c | | | Not producing* | David Donoghue | 90 |
| 1,000c | | | | David Donoghue: NPN 12/24/19 | 91 |
| 2,660c | | 2,600* | | David Donoghue: NPN 12/24/19 | 92 |
| 250# | | | Not producing* | David Donoghue: OW 7/26/19 | 93 |
| 200c | | | | David Donoghue: O&GJ 7/25/19 p. 22: NPN 12/24/19 | 94 |
| | | | | David Donoghue | 95 |
| | | | | David Donoghue: NPN 7/16/19 | 96 |

## Petitioner's Exhibit No. 63 (co

| Our No. | Class | Area | Company | Farm Name | Well No. | Date of Completion | Depth | Sand Record | Initial Production (Barrels) | Producti May, 19 (Barrels |
|---|---|---|---|---|---|---|---|---|---|---|
| | ◆ Profitable well<br>◈ Unprofitable well | | | | | | | | | |
| 97 | ◈ | — | Magnolia Petroleum Company | I. C. Barry | 1 | 7-10-1919## | 2930* | 2911-2930* | 35## | |
| 98 | ◈ | B | J. E. Crosby et al. | Ed Putty | 2 | 7-10-1919¢ | 2815¢ | 2732- ¢ | 40¢ | |
| 99 | ◈ | A | North American Oil and Ref. Co. | J. H. Haynes | 1 | 7-10-1919¢ | 2998¢ | | 10# | |
| 100 | | B | Central Texas Oil Company | Carruth heirs | 2 | 7-11-1919¢ | 2721¢ | -2721¢ | 12,000,000 cu. ft. gas¢ | |
| 101 | ◆ | B | Cosden Oil and Gas Company | J. T. Carruth | 2 | 7-12-1919¢ | 2721* | 2687-2721* | 800* | |
| 102 | ◆ | B | Warren Wagner | B. I. Terry | 1 | 7-14-1919¢ | 2664¢ | 2655-2664¢ | 3,500¢ | |
| 103 | ◆ | B | Moorehead, Ross & Sanders | J. D. Moorehead | 1 | 7-15-1919¢ | 2732¢ | 2728-2732¢ | 1,000¢ | |
| 104 | ◆ | B | Humble Oil and Refining Co. | N. V. Ellison | 1 | 7-15-1919## | 2707* | 2684-2707* | 7,000* | |
| 105 | | B | Plains Oil and Gas Company | F. W. Ende | 1 | 7-17-1919¢ | 2577* | 2570-2577* | 6,000,000 cu. ft. gas¢ | |
| 106 | ◈ | A | Tex-Penn Oil Company | Mary Lewis | 3 | 7-17-1919¢ | 2940* | 2625-2638* | 10* | |
| 107 | ◆ | B | Beaver Valley Oil and Ref. Co. | B. I. Terry | 1 | 7-17-1919¢ | 2680* | 2655-2680* | 3,000* | |
| 108 | ◈ | B | Jake Hamon | C. F. Jones (Townsite) | 1 | 7-17-1919¢ | 2783¢ | 2765-2783¢ | 50¢ | |
| 109 | | A | Atlantic Oil Producing Company | H. H. Vaught | 1 | 7-18-1919¢ | 2497¢ | 2490-2497¢ | 10,000,000 cu. ft. gas¢ | |
| 110 | ◈ | B | Tex-Penn Oil Company | G. W. Crowell | 3 | 7-18-1919## | 2705## | | 50## | |
| 111 | ◈ | B | Plains Oil and Gas Company | J. D. Herrington | 9 | 7-19-1919¢ | 3040¢ | D. and A.¢ | | |
| 112 | ◈ | B | Magnolia Petroleum Company | N. O. Beardon | 1 | 7-19-1919## | 2701* | 2673-2700* | 25* | |
| 113 | | B | Comanche Northern Oil Co. | J. T. Carruth | 3 | 7-20-1919¢ | 2695¢ | 2688-2695¢ | 20,000,000 cu. ft. gas¢ | |
| 114 | ◈ | B | J. L. Hamon et al. | J. S. Bowles | 2 | 7-21-1919¢ | 2695* | 2660-2670* | 25* | |
| 115 | | B | Dividend Oil Company | Terry | 1 | 7-22-1919¢ | 2714¢ | 2663-2714* | 10,000,000 cu. ft. gas¢ | |
| 116 | ◈ | B | Gulf Production Company | Prater-Grice | 2 | 7-24-1919¢ | 2719* | | 187¢ | |
| 117 | ◆ | B | Comanche Northern Oil Company | Carruth heirs | 2 | 7-24-1919¢ | 2714* | 2686-2714* | 2,500* | |
| 118 | ◆ | B | Sun Company | S. K. Shuler | 2 | 7-24-1919¢ | 2689¢ | 2656-2663* | 3,900* | |
| 119 | | B | Selby Oil and Gas Company | J. T. Carruth | 2 | 7-25-1919¢ | 2680* | 2655-2680* | 30,000,000 cu. ft. gas* | |
| 120 | ◆ | B | Sun Company | S. K. Shuler | 4 | 7-25-1919¢ | 2700¢ | 2669-2700¢ | 600¢ | |
| 121 | ◈ | B | Herndon et al. | B. I. Terry | 1 | 7-28-1919¢ | 2714* | 2700-2714* | 100* | |
| 122 | ◈ | A | Humble Oil and Refining Co. | W. Stockton | 1 | 7-29-1919¢ | 3035* | 2761-2770¢ | 25* | 5 |
| 123 | ◆ | B | Gulf Production Company | Prater-Grice | 3 | 7-29-1919¢ | | | 400¢ | |
| 124 | ◈ | B | Humble Oil and Refining Co. | Dick Gray | 3 | 7-30-1919## | 2862## | 2750-2850* | 30## | |
| 125 | ◆ | B | Mid-Kansas Oil and Gas Company | P. J. Dabney | 1 | | 2701* | 2682-2701* | 1,000* | |
| 126 | ◈ | — | Comanche Queen Oil Company | Rigsby | 1 | 7- -1919* | 2935* | 2770-2785* | Abandoned—some gas* | |
| 127 | ◆ | B | Comanche Home Oil Company | A. C. Brown | 1 | 7- -1919* | 3007* | 2941-2954* | 800* | |
| 128 | ◆ | B | Comanche Central Oil Company | B. I. Terry | 1 | 7- -1919* | 2706* | 2660-2706* | 2,500* | |
| 129 | ◆ | B | Comanche County Oil Company | B. I. Terry | 1 | 7- -1919* | 2700* | 2670-2700* | 2,000* | |
| 130 | ◈ | B | J. L. Hamon et al. | J. S. Bowles | 1 | 7- -1919* | 2917* | 2760-2825* | 10* | |
| 131 | ◈ | B | Skelly & Sankey | Neilson-Corbett | 1 | 7- -1919* | 2825* | 2780-2825* | 200* | |
| 132 | ◆ | B | Riley Drilling Company | Townsite | 1 | 7- -1919* | 2748* | 2726-2746* | 500* | |
| 17 | ◆ | B | Cosden Oil and Gas Company | J. T. Carruth | 1 | 7- -1919* | 2690* | 2672-2690* | 2,200* | |
| 133 | | B | Sinclair Consolidated Oil Co. | F. D. Hogg | 4 | | | 2770-2843* | 1800' fluid in hole* | |
| 134 | | B | McMan Oil Company | J. W. Reynolds | 1 | | | 2690- * | 15,000,000 cu. ft. gas* | |
| 135 | ◈ | A | Plains Oil and Gas Company | Richmond | 1 | | | | Drlg. at 2850' with good show of oil# | |
| 136 | ◈ | — | Stewart Oil Company | Patterson | 1 | | | | Drlg. at 3160'# | |
| 137 | ◈ | — | Radium Petroleum Company | Decker | 1 | | | | Drlg. at 3085'# | |
| 138 | ◈ | A | Empire Gas and Fuel Company | Lindley | 1 | 7- -1919# | 2715# | 2665-2700* | 15* | |
| 139 | ◈ | — | Erath Duke Oil Company | B. M. Keith | 1 | 7- -1919* | 3005* | 2945-3005* | 10* | |
| 140 | | A | Atlantic Oil Producing Company | J. Terry | 1 | 7- -1919* | 2875* | 2854-2868* | 12,000,000 cu. ft. gas* | |

## er's Exhibit No. 63 (continued).

| Initial Production (Barrels) | Production May, 1919 (Barrels) | Production July, 1919 (Barrels) | Production Dec., 1919 (Barrels) | Source of Information | Our No. |
|---|---|---|---|---|---|
| | | | | *National Petroleum News: **Oil Weekly: #Oil and Gas Journal: ##Owner's records: ¢David Donoghue | |
| 35## | | | | Owner's records: NPN 12/24/19 | 97 |
| 40¢ | | 30** | | David Donoghue: OW 7/26/19 | 98 |
| 10# | | | | David Donoghue: O&GJ 7/11/19 | 99 |
| 2,000,000 cu. ft. gas¢ | | | | David Donoghue | 100 |
| 800* | | | | David Donoghue: NPN 12/24/19 | 101 |
| 3,500¢ | | 3,500** | | David Donoghue: OW 7/26/19 | 102 |
| 1,000¢ | | | | David Donoghue | 103 |
| 7,000* | | | | Owner's records: NPN 12/24/19 | 104 |
| 6,000,000 cu. ft. gas¢ | | | | David Donoghue: NPN 12/24/19 | 105 |
| 10* | | | | David Donoghue: NPN 7/16/19; 12/24/19 | 106 |
| 3,000* | | | | David Donoghue: NPN 12/24/19 | 107 |
| 50¢ | | | 10* | David Donoghue: NPN 12/24/19 | 108 |
| 0,000,000 cu. ft. gas¢ | | 20,000,000 cu. ft. gas* | | David Donoghue: NPN 7/16/19 | 109 |
| 50## | | | | Owner's records | 110 |
| | | | | David Donoghue | 111 |
| 25* | | | 7* | Owner's records: NPN 12/24/19 | 112 |
| 0,000,000 cu. ft. gas¢ | | | | David Donoghue | 113 |
| 25* | | | Not producing* | David Donoghue: NPN 7/16/19; 12/24/19 | 114 |
| 0,000,000 cu. ft. gas¢ | | | Not producing* | David Donoghue: NPN 12/24/19 | 115 |
| 187¢ | | Shut down top of pay* | | David Donoghue: NPN 12/24/19 | 116 |
| 2,500* | | | | David Donoghue: NPN 12/24/19 | 117 |
| 3,000* | | | | David Donoghue: NPN 12/24/19 | 118 |
| 30,000,000 cu. ft. gas* | | 30,000,000 cu. ft. gas* | | David Donoghue: NPN 7/16/19; 12/24/19 | 119 |
| 600¢ | | | | David Donoghue | 120 |
| 100* | | | | David Donoghue: NPN 12/24/19 | 121 |
| 25* | 5** | 25* | | David Donoghue: NPN 7/16/19: OW 6/7/19 p. 24 | 122 |
| 400¢ | | Shut down top of pay¢ | | David Donoghue | 123 |
| 30## | | | | Owner's records: NPN 12/24/19 | 124 |
| 1,000* | | 1,000* | | NPN 7/16/19; 12/24/19 | 125 |
| Abandoned—some gas* | | | | NPN 12/24/19 | 126 |
| 800* | | | 120* | NPN 12/24/19 | 127 |
| 2,500* | | | | NPN 12/24/19 | 128 |
| 2,000* | | | | NPN 12/24/19 | 129 |
| 10* | | | 20,000,000 gas* | NPN 12/24/19 | 130 |
| 200* | | | | NPN 12/24/19 | 131 |
| 500* | | 500** | 35* | NPN 12/24/19: OW 7/26/19 | 132 |
| 2,200* | | 2,600** | | NPN 12/24/19: OW 7/26/19 | 17 |
| 800' fluid in hole* | | | | NPN 7/16/19 | 133 |
| 5,000,000 cu. ft. gas* | | 15,000,000 cu. ft. gas* | | NPN 7/16/19 | 134 |
| Drlg. at 2850' with good show of oil# | | | | O&GJ 8/1/19 | 135 |
| Drlg. at 3160'# | | | | O&GJ 8/1/19 | 136 |
| Drlg. at 3085'# | | | | O&GJ 8/1/19 | 137 |
| 15* | | | Not producing* | O&GJ 7/18/19 p. 22: NPN 12/24/19 | 138 |
| 10* | | | 5* | NPN 12/24/19 | 139 |
| 12,000,000 cu. ft. gas* | | | | NPN 12/24/19 | 140 |

**Petitioner's Exhibit No. 64.**

Map of Desdemona pool showing wells drilled in areas "A" and "B" prior to August 1, 1919, with designated markings to signify whether such wells were profitable, non-profitable, dry holes or gas wells.

(See folder of unprinted exhibits.)

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**Petitioner's Exhibit No. 65.**

Enlarged map showing areas "A" and "B" taken from Petitioner's Exhibit 64 above.

(See folder of unprinted exhibits.)

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**Petitioner's Exhibit No. 66.**

Excerpt from Oil Weekly, dated May 10, 1919, comparing initial and present production in Eastland County, Texas.

(See folder of unprinted exhibits.)

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**Petitioner's Exhibit No. 67.**

Excerpt from supplement to National Petroleum News, dated May 21, 1919, showing initial and present production of wells in Eastland, Comanche, Erath and Stephens Counties, Texas.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 68.

Supplement to National Petroleum News, issued July 16, 1919, Volume 41, No. 29, entitled "Initial, Present Production, Sand Records of Wells in North Texas Development, including Eastland and Stephens Counties, and Duke-Knöles area in Comanche and Erath Counties."

(See folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 69.

Article from National Petroleum News, dated July 16, 1919, showing total oil produced and percentage of decline in 241 wells in Ranger Field.

(Set out in full in the statement of evidence, at page 834, *ante*.)

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## Petitioner's Exhibit No. 70.

Composite decline rate of Eastland County wells based on National Petroleum News tabulation, issue of July 16, 1919—Petitioner's Exhibit 68.

(See folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 71.

Chart showing price of oil from 1859 to 1931 and average daily production by years.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 72.

DETERMINATION OF "PROFITABLE" WELL

PART "A"—TABULATION SHOWING ULTIMATE YIELD PER BARREL OF INITIAL PRODUCTION

EASTLAND COUNTY PROPERTIES OUTSIDE OF DESDEMONA POOL

| Company | Lease | Wells on Which We Have Initials | Total Initial Barrels | Average Initial Per Well | Year of First Production | Cumulative Production | Date of Previous Column | Daily Production at Date in Next Column | Date | Wells Producing at End of Period | Barrels Produced Per Barrel of Initial |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Gulf Production Company | Marie Barnes | 5 | 3,023 | 604 | 1919 | 234,260 | 12-31-1925 | 67 | May, 1926 | 1 | 77 |
| " " " | Brelsford | 2 | 81 | 40 | 1919 | 50,248 | " | 4 | " " | 1 | 620 |
| " " " | Caudle | 5 | 347 | 69 | 1923 | 41,667 | " | 10 | " " | 3 | 120 |
| " " " | Davenport | 4 | 590 | 147 | 1922 | 113,083 | " | 25 | " " | 4 | 192 |
| " " " | L. Kinnebrew | 1 | 957 | 239 | 1923 | 137,793 | " | 28 | " " | 3 | 144 |
| " " " | C. L. Perkins | 8 | 6,008 | 751 | 1919 | 510,207 | " | 42 | " " | 5 | 85 |
| " " " | J. W. Ray | 1 | 187 | 187 | 1920 | 50,953 | " | 9 | " " | 1 | 272 |
| " " " | Rowland et al. | 1 | 137 | 137 | 1919 | 18,652 | " | None | " " | None | 136 |
| " " " | State—Collett | 5 | 1,647 | 329 | 1919 | 276,053 | " | 10 | " " | 2 | 168 |
| " " " | F. W. Taylor | 12 | 11,729 | 977 | 1918 | 1,471,549 | " | 95½ | " " | 7 | 125 |
| TOTAL GULF | 10 properties | 47 | 24,705 | 526 | | 2,904,465 | | 290½ | | 27 | 117.5 |
| Texas & Pacific Coal & Oil Co. | J. E. Butler | 23 | 16,996 | 739 | 1918 | 2,129,233 | 12-31-1930 | 250 | 12-31-1929 | 12 | 125 |
| " " " " " | T. J. Earnest | 5 | 2,673 | 534 | 1918 | 703,485 | " | 70 | " | 4 | 263 |
| " " " " " | Eva (E. P.) Davenport | 3 | 1,460 | 487 | 1918 | 347,783 | 12-31-1929 | 2 | " | 1 | 238 |
| " " " " " | W. R. Hodges (Heirs) | 4 | 772 | 193 | 1918 | 270,198 | " | 18 | " | 1 | 350 |
| " " " " " | Floyd Brewer | 11 | 16,600 | 1,509 | 1918 | 1,527,541 | 12-31-1930 | 40 | " | 6 | 92 |
| " " " " " | O. P. England et al. | 1 | 400 | 460 | 1918 | 17,943 | 12-31-1929 | 1 | " | 1 | 45 |
| " " " " " | C. J. Keaghey "A" | 2 | 1,350 | 675 | 1918 | 169,577 | " | 16 | " | 1 | 126 |
| " " " " " | J. H. McCleskey | 5 | 1,812 | 362 | 1919 | 103,967 | " | 7 | " | 2 | 57 |
| " " " " " | L. C. Norwood | 28 | 23,330 | 833 | 1919 | 2,189,601 | 12-31-1930 | 60 | " | 12 | 94 |
| " " " " " | Ward Rice | 2 | 100+ | 50+ | 1918 | 40,579 | 12-31-1929 | ¼ | " | 1 | 406— |
| " " " " " | J. M. Rust | 2 | 760 | 380 | 1918 | 44,166 | " | 8 | " | 1 | 58 |
| " " " " " | C. E. Terrell | 12 | 11,359 | 946 | 1918 | 659,699 | 12-31-1930 | 25 | " | 4 | 58 |
| " " " " " | J. R. Wood | 5 | 2,695 | 539 | 1918 | 215,594 | 12-31-1929 | 6 | " | 3 | 80 |
| " " " " " | Ida Slaydon et al. | 6 | 3,237 | 539 | 1918 | 570,882 | " | 5 | " | 3 | 145 |
| TOTAL T. & P. | 14 properties | 109 | 83,544 | 766 | | 8,990,248 | | 508¼ | | 52 | 107 |

## Petitioner's Exhibit No. 73.

Statistics and graph showing production from various wells on Tex-Penn leases and from Magnolia-Duke No. 1 prior to August 1, 1919.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 74.

DETERMINATION OF "PROFITABLE" WELL

PART "A," PAGE 2—TABULATION SHOWING ULTIMATE YIELD PER BARREL OF INITIAL PRODUCTION PROPERTIES IN THE DESDEMONA POOL

| Company | Lease | Wells on Which We Have Initials | Total Initial Barrels | Average Initial Per Well | Cumulative Production | Date of Previous Column | Barrels Produced Per Barrel of Initial |
|---|---|---|---|---|---|---|---|
| Transcontinental Oil Company | J. N. Duke | 6 | 878 | 146 | 92,257 | 8-20-1930 | 105 |
| " " " | G. W. Knowles | 3 | 9,430 | 3,143 | 590,625 | " | 63 |
| Total Transcontinental | 2 properties | 9 | 10,308 | 1,145 | 682,882 | | 66 |
| GRAND TOTAL | 27 properties | 119 | 82,939 | 697 | 5,515,039 | | 66 |

## Petitioner's Exhibit No. 75.

Excerpt from Oil Weekly, issued October 18, 1919, page 140, showing costs of drilling in Ranger Field and estimated costs in Desdemona and Breckenridge.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 76.

Geologic cross section showing relationship of Duke-Knoles pool to Ranger and Breckenridge Fields.

(See folder of unprinted exhibits.)

# Petitioner's Exhibit No. 77.

## Wells Drilled on or Closely Surrounding the Transcontinental Duke-Knoles Properties Before August 1, 1919

| Wells Drilled on the Properties | | | | Wells Drilled Offsetting on North or Within a Mile of the East, South and West Borders of Properties | | | Direct North Offsets to Properties* | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Production | | | | | | | |
| Well No. | Date of Completion | Initial | July, 1919 | Well No. | Date of Completion | Initial Barrels | Well No. | Date of Completion | Initial Barrels |
| 1 | 9/ 2/18 | 600 | None | 6 | 2/ 6/19 | 7 | 16 | 4/20/19 | 70 |
| 2 | 12/28/18 | 5,800 | 448 | 9 | 2/26/19 | 60 | 22 | 4/27/19 | 15 |
| 5 | 2/ 2/19 | Gas | | 12 | 3/31/19 | Dry | 46 | 5/29/19 | 430 |
| 7 | 2/19/19 | Gas | | 16 | 4/20/19 | 70 | 91 | 7/ 5/19 | 240† |
| 56 | 6/ 3/19 | 100 | 136 | 19 | 4/21/19 | 30 | 115 | 7/22/19 | Gas |
| 59 | 6/ 4/19 | 25 | None | 21 | 4/23/19 | 30 | | | |
| 60 | 6/ 6/19 | Gas | | 22 | 4/27/19 | 15 | | | |
| 61 | 6/ 7/19 | 120 | 83 | 25 | 4/30/19 | 25 | | | |
| 64 | 6/ 9/19 | 130 | 53 | 27 | 5/ 3/19 | 40 | | | |
| 72 | 6/25/19 | 530 | 344 | 30 | 5/ 9/19 | Dry | | | |
| 106 | 7/17/19 | 10 | None | 31 | 5/11/19 | 18 | | | |
| 110 | 7/18/19 | 50 | None | 37 | 5/17/19 | 60 | | | |
| | | | | 38 | 5/17/19 | 45 | | | |
| | | | | 39 | 5/18/19 | Dry | | | |
| | | | | 40 | 5/19/19 | Dry | | | |
| | | | | 44 | 5/27/19 | 10 | | | |
| | | | | 45 | 5/27/19 | Dry | | | |
| | | | | 46 | 5/29/19 | 430 | | | |
| | | | | 47 | May, 1919 | 5 | | | |
| | | | | 48 | May, 1919 | Dry | | | |
| | | | | 49 | May, 1919 | Dry | | | |
| | | | | 50 | May, 1919 | 25 | | | |
| | | | | 51 | May, 1919 | 5 | | | |
| | | | | 52 | May, 1919 | 10 | | | |
| (3 | 1/ 4/19 | 1,000) | | 53 | May, 1919 | 40 | | | |
| (Offsetting Tex-Penn properties on inside line and not included in totals immediately below.) | | | | 66 | 6/ 9/19 | Dry | | | |
| | | | | 68 | 6/16/19 | Dry | | | |
| | | | | 79 | June, 1919 | Dry | | | |
| | | | | 88 | 7/ 5/19 | 15 | | | |
| | | | | 91 | 7/ 5/19 | 240† | | | |
| | | | | 96 | 7/10/19 | Dry | | | |
| | | | | 99 | 7/10/19 | 10 | | | |
| | | | | 109 | 7/18/19 | Gas | | | |
| | | | | 115 | 7/22/19 | Gas | | | |
| | | | | 122 | 7/29/19 | 25 | | | |
| | | | | 138 | July, 1919 | 15 | | | |
| | | | | 140 | July, 1919 | Gas | | | |
| 12 | | 7,365 | 1,064 | 37 | | 1,230 | 3 | | 735 |

*Included in middle column.
†Sand card shows "Temporarily abandoned, gasser."

### SUMMARY TABULATION

| | *Wells* | *Aggregate Initial* | *Average Initial* |
|---|---|---|---|
| On Tex-Penn properties | 12 | 7,365 | 614 |
| Offsetting inside line of Tex-Penn properties | 1 | 1,000 | 1,000 |
| Immediately surrounding properties near outside lines | 37 | 1,230 | 33 |
| Total | 50 | 9,595 | 192 |

# Petitioner's Exhibit No. 78.

## Comparison of Wells in Areas "A" and "B," Completed to July 31, 1919

(Areas are the same size)

| | Area "A" | Area "B" |
|---|---|---|
| Completed wells July 31, 1919 (except gas wells) | 40 | 73 |
| Gas wells | 4 | 10 |
| | 44 | 83 |
| Profitable wells | 5 (14%) | 41 (56%) |
| Unprofitable wells | 35 (86%) | 32 (44%) |
| Total initial barrels developed | 9,205 | 80,556 |
| Average initial per well | 230 | 1,103 |

## Comparison in Detail

| Profitable Wells | | | | Unprofitable Wells | | | | Gas Wells | |
|---|---|---|---|---|---|---|---|---|---|
| Area "A" | | Area "B" | | Area "A" | | Area "B" | | Area "A" | Area "B" |
| Well No. | Bbls. Initial | Well No. | Bbls. Initial | Well No. | Bbls. Initial | Well No. | Bbls. Initial | Well No. | Well No. |
| 1 | 600 | 4 | 500 | 6 | 7 | 8 | 12 | 5 | 54 |
| 2 | 5,800 | 10 | 400 | 9 | 60 | 11 | 200 | 7 | 60 |
| 3 | 1,000 | 14 | 3,500 | 12 | Dry | 15 | 50 | 109 | 80 |
| 63 | 400 | 17 | 2,200 | 19 | 30 | 16 | 70 | 140 | 81 |
| 72 | 530 | 18 | 400 | 21 | 30 | 22 | 15 | | 100 |
| | | 20 | 600 | 24 | 75 | 23 | 45 | | 105 |
| | | 28 | 600 | 25 | 25 | 26 | 50 | | 113 |
| | | 29 | 300 | 27 | 40 | 41 | 250 | | 115 |
| | | 32 | 500 | 30 | Dry | 42 | 112 | | 119 |
| | | 33 | 5,000 | 31 | 18 | 57 | 150 | | 134 |
| | | 34 | 3,500 | 38 | 45 | 62 | 200 | | |
| | | 43 | 500 | 40 | Dry | 65 | 50 | | |
| | | 46 | 430 | 44 | 10 | 69 | 150 | | |
| | | 55 | 1,800 | 45 | Dry | 71 | 200 | | |
| | | 58 | 2,700 | 47 | 5 | 77 | 75 | | |
| | | 67 | 8,000 | 48 | Dry | 82 | 15 | | |
| | | 73 | 400 | 49 | Dry | 83 | 25 | | |
| | | 74 | 400 | 50 | 25 | 84 | 10 | | |
| | | 75 | 300 | 51 | 5 | 91 | 240 | | |
| | | 76 | 300 | 52 | 10 | 94 | 250 | | |
| | | 78 | 600 | 53 | 40 | 95 | 200 | | |
| | | 85 | 6,000 | 56 | 100 | 98 | 40 | | |
| | | 86 | 4,000 | 59 | 25 | 108 | 50 | | |
| | | 89 | 500 | 61 | 120 | 110 | 50 | | |
| | | 90 | 1,800 | 64 | 130 | 111 | Dry | | |
| | | 92 | 1,000 | 66 | Dry | 112 | 25 | | |
| | | 93 | 2,660 | 68 | Dry | 114 | 25 | | |
| | | 101 | 800 | 79 | Dry | 116 | 187 | | |
| | | 102 | 3,500 | 88 | 15 | 121 | 100 | | |
| | | 103 | 1,000 | 96 | Dry | 124 | 30 | | |
| | | 104 | 7,000 | 99 | 10 | 130 | 10 | | |
| | | 107 | 3,000 | 106 | 10 | 131 | 200 | | |
| | | 117 | 2,500 | 122 | 25 | | | | |
| | | 118 | 3,000 | 135 | Dry | | | | |
| | | 120 | 600 | 138 | 15 | | | | |
| | | 123 | 400 | | | | | | |
| | | 125 | 1,000 | | | | | | |
| | | 127 | 800 | | | | | | |
| | | 128 | 2,500 | | | | | | |
| | | 129 | 2,000 | | | | | | |
| | | 132 | 500 | | | | | | |
| 5 | 8,330 | 41 | 77,490 | 35 | 875 | 32 | 3,066 | 4 | 10 |
| Average— 1,666 | | | 1,890 | | 25 | | 96 | | |

## Petitioner's Exhibit No. 79.

Preliminary map showing areas "A" and "B" in square blocks, instead of circles as in Petitioner's Exhibit 65.

(See folder of unprinted exhibits.)

**Petitioner's Exhibit No. 80.**

(See lithograph following page 875.)

## Petitioner's Exhibit No. 80-A.

Letter from Humble Oil & Refining Company to Earl Oliver, dated May 2, 1919, giving production statistics shown on Petitioner's Exhibit 80.

(Omitted because merely confirmatory of source of data used by witness in preparing Exhibit 80.)

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## Petitioner's Exhibit No. 80-B.

Tabulation prepared by Magnolia Petroleum Company giving production statistics shown on Petitioner's Exhibit 80.

(Omitted for the reasons given under Exhibit 80-A next preceding.)

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## Petitioner's Exhibits Nos. 81 and 81-A.

Large map of Texas and Oklahoma (in two sheets), showing leases owned by Transcontinental at organization.

(See folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 82.

RIVERSIDE EASTERN OIL COMPANY
AND SUBSIDIARIES

COMPUTATION OF PROFITS BEFORE DEPRECIATION AND INTEREST—JANUARY 1, 1916 TO JULY 31, 1919

| *Year* | *Profits Before Depreciation* | *Interest* | *Profits Before Depreciation and Interest* |
|---|---|---|---|
| 1916 | $145,748.54 | $ 1,125.53 | $146,874.07 |
| 1917 | 89,044.31 | 7,300.43 | 96,344.74 |
| 1918 | 36,537.71 | 18,066.17 | 54,603.88 |
| 1919 (7 mos.) | 32,802.66* | 13,872.08 | 18,930.58* |
| | $238,527.90 | $40,364.21 | $278,892.11 |

* Loss.

## Petitioner's Exhibit No. 83.

RIVERSIDE WESTERN OIL COMPANY
AND SUBSIDIARY

COMPUTATION OF PROFITS BEFORE DEPRECIATION AND INTEREST—JANUARY 18, 1913 TO JULY 31, 1919

| Year | Profits Before Depreciation | Interest | Profits Before Depreciation and Interest |
|---|---|---|---|
| 1913 | $ 13,159.63 | $ 691.04 | $ 13,850.67 |
| 1914 | 12,220.26 | 2,310.07 | 14,530.33 |
| 1915 | 14,861.45 | 10,469.63 | 25,331.08 |
| 1916 | 173,249.69 | 6,647.50 | 179,897.19 |
| 1917 | 234,114.69 | 12,076.17 | 246,190.86 |
| 1918 | 168,124.64 | 26,735.43 | 194,860.07 |
| 1919 (7 mos.) | 27,715.84 | 27,723.01 | 55,438.85 |
| | $643,446.20 | $86,652.85 | $730,099.05 |

## Petitioner's Exhibit No. 84.

Statements showing range of weekly quotations on the New York Curb Exchange from June 21, 1919, to August 1, 1919, together with weekly volume and aggregate sales for the period.

(Set out in the statement of evidence, at page 936, *ante*.)

## Petitioner's Exhibit No. 85.

Illustrative map (R. E. Davis) showing development in Duke-Knoles Field to January 4, 1919.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 86.

Illustrative map (R. E. Davis) showing development in Duke-Knoles Field to April 1, 1919.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 87.

Illustrative map (R. E. Davis) showing development in Duke-Knoles Field to May 12, 1919.

(See folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 88.

Illustrative map (R. E. Davis) showing development in Duke-Knoles Field to July 1, 1919.

(See folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 89.

Illustrative map (R. E. Davis) showing development in Duke-Knoles Field to August 1, 1919.

(Lithographic reproduction of this map appears opposite page 1000 of the statement of evidence; see also folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 90.

Return of J. L. Kirkland for 1919 claiming loss on sale of Tex-Penn stock as sold to Benedum and Parriott.

(Substance recited in the statement of evidence—see page 1084, *ante*.)

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## Petitioner's Exhibit No. 90-A.

Examining agent's report on J. L. Kirkland's return, Exhibit 90.

(Substance recited in the statement of evidence—see page 1085, *ante*.)

## Petitioner's Exhibit No. 91.

Tabulation of leases acquired by Transcontinental on August 1, 1919, from Pittsburgh-Texas Oil & Gas Company (not printed).

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## Petitioner's Exhibit No. 92.

Minutes of Board of Directors of Riverside Eastern Oil Company.

(Substance recited in the statement of evidence—see page 1086, *ante*.)

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## Petitioner's Exhibit No. 93.

Certificate of dissolution of Secretary of State of Delaware re Riverside Eastern (not printed).

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## Petitioner's Exhibit No. 94.

First page of stock transfer agent's ledger showing receipt by Riverside Eastern of 41,666 shares Transcontinental stock and first breakdown, March 9, 1920.

(Substance recited in the statement of evidence—see page 1086, *ante*.)

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## Petitioner's Exhibit No. 95.

Minutes of Riverside Western directors' meeting authorizing the distribution of 41,667 shares Transcontinental common stock.

(Substance recited in the statement of evidence—see page 1086, *ante*.)

## Petitioner's Exhibit No. 96.

Certificate of Secretary of State of West Virginia re dissolution of Riverside Western.

(Substance recited in the statement of evidence—see page 1086, *ante.*)

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## Petitioner's Exhibit No. 97.

The first page of stock transfer agent's ledger, showing receipt by Riverside Western of 41,667 shares of Transcontinental common stock and first breakdown of March 9, 1920.

(Substance recited in the statement of evidence—see page 1086, *ante.*)

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## Petitioner's Exhibit No. 98.

Minutes of Pittsburgh-Texas directors authorizing distribution to stockholders of Transcontinental stock received, and authorizing dissolution (not printed).

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## Petitioner's Exhibit No. 99.

Certificate of Secretary of State of West Virginia re dissolution of Pittsburgh-Texas Oil & Gas Company (not printed).

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## Petitioner's Exhibit No. 100.

First page of stock transfer agent's ledger, showing receipt by Pittsburgh-Texas of 158,833 shares of Transcontinental stock and first breakdown, October 9, 1919.

(Substance recited in the statement of evidence—see page 1087, *ante.*)

***Petitioner's Exhibits on Cross-Examination:***

**Petitioner's Exhibit No. 101.**

Map showing grouping, in five blocks, of Tex-Penn acreage according to respondent's witness Sinion.
(See folder of unprinted exhibits.)

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**Petitioner's Exhibit No. 102.**

TABULATION SHOWING COST OF LEASES ACQUIRED, PROCEEDS FROM SALES AND NET LOSS THEREFROM

| | *Cost* | *Sales* |
|---|---|---|
| Cronican | $27,614.60 | $54,500.00 |
| Jones | 40,560.00 | ..... |
| Kennison | ..... | 10,000.00 |
| Ashworth | 17,565.00 | 17,381.25 |
| Sandeford | 3,750.00 | 3,750.00 |
| Womack | 4,300.00 | 7,230.00 |
| Gowan | 3,525.00 | 6,325.00 |
| Emde (?) | 2,250.00 | ..... |
| | $ 99,564.60 | $ 99,236.25 |
| Bradley—Cost offset by sale of 475 a..... | | 16,900.00 |
| | | $116,636.25 |

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**Petitioner's Exhibit No. 103.**

Check of Gulf Production Company showing purchase of Jones lease as "protection" acreage.
(See folder of unprinted exhibits.)

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**Petitioner's Exhibits Nos. 104 and 105.**

Checks of Gulf Production Company showing purchase of Kivett lease as "protection" acreage.
(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 106.

Check of Gulf Production Company showing purchase of Prater-Grice lease as "protection" acreage.

(See folder of unprinted exhibits.)

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## Petitioner's Exhibit No. 107 for Identification.

Graph depicting market quotations on New York Curb Exchange and New York Stock Exchange for Transcontinental stock to April, 1924, and depicting weekly volume (taken from Commercial and Financial Chronicle).

(See folder of unprinted exhibits.)

Respondent's objection to admission sustained in the statement of evidence, at pages 1679-1680.

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## Petitioner's Exhibit No. 108.

Map prepared by witness David Donoghue (on base map KK-1), marked with locations of certain wells drilled in the Desdemona area particularly surrounding the Tex-Penn acreage below the Marble Falls formation.

(See folder of unprinted exhibits.)

## Petitioner's Exhibit No. 108-A.

TABULATION SHOWING VARIOUS WELLS DRILLED IN THE DESDEMONA FIELD PRIOR TO AUGUST 1, 1919, WHICH PENETRATED DEPTHS OF 200 FEET OR MORE BELOW TOP OF LIME (MARBLE FALLS).

| Key No. (Ex. 63) | Company | Lease | Well No. | Date Completed Year 1919 | Total Depth | Remarks | | |
|---|---|---|---|---|---|---|---|---|
| 13 | Ohio Fuel | Herrington | 1 | Apr. 12 | 3720 | 75 B. at 3109 to 3140. Ellenburger. | | |
| 26 | Connelle & Aguirre | Eppler | 1 | Apr. 30 | 3502 | Oil at 2829 to 2870. Ellenburger at 3258. | | |
| 53 | Cosden | Stockton | 1 | Apr. 30 | 3250 | Ellenburger at 3175. Finally aban. 8/8/19. | | |
| 8 | Magnolia | E. S. Davis | 1 | Feb. 21 | 2998 | 15 B. 298 ft. below top of lime. | | |
| 12 | Gates Oil Co. | Hilley | 1 | Apr. 21 | 3568 | Dry. Ellenburger at 3340. | U. of T. Bull. | |
| 21 | Sun Co. | Mahon | 1 | Apr. 23 | 2920 | 15 B. 381' below top of lime. | | |
| 22 | Wyandotte Hogg Creek | Thompson | 1 | Apr. 27 | 2850 | 15 B. 230' " " " " | | |
| 27 | Plains | Stockton | 1 | May 3 | 2935 | 15 B. 315' " " " " approx. | | |
| 30 | Crescent | Pearson | 1 | May 9 | 2985 | Dry. 305' " " " " | | |
| 31 | R. O. Harvey | Russell & Ballard | 1 | May 11 | 3085 | 18 B. 332' " " " " | | |
| 38 | Texas Co. | Wilson | 1 | May 17 | 2860 | 45 B. | Matson | —1200 ft. contour Bottom at—1504 |
| 40 | Skelly-Sankey | Pearson | 1 | May 19 | 2935 | Dry. | | —1400 —1630 |
| 48 | Duke Dome | Pearson | 1 | May 23 | 3234 | Aban. | | —1400 —1931 |
| 44 | R. O. Harvey | Braswell | 1 | May 27 | 3130 | Dry. 490' below top of lime approx. | | |
| 52 | Southwest | Pearson | 1 | June 9 | 3100 | In Sept. drilled to 3175. Shot twice 20 B. | | —1400 —1788 |
| 68 | Producers & Refiners | Hodge | 1 | June 16 | 3365 | Ellenburger. | | |
| 106 | Tex-Penn | Mary Lewis | 3 | June 30 | 2937 | 350' below top of lime. | | |
| 114 | J. L. Hamon | Bowles | 2 | July 21 | 2936 | 276' " " " " | | |
| 122 | Humble | Stockton | 1 | June 23 | 3035 | Dry. 495' " " " " | | |
| 133 | Sinclair | Hogg | 4 | July 21 | 2940<br>3241 | | | —1350 —1595 |
| 60 | Tex-Penn | Crowell | 1 | June 30 | 3108 | ? | | |

## Petitioner's Exhibit No. 108-B.

Cross section prepared by witness Donoghue to depict relative location of the Ellenburger sand below the Marble Falls formation and the relative depths to which blank wells shown on Petitioner's Exhibit 108 were drilled below Marble Falls.

(Lithographic reproduction of this exhibit appears opposite page .... of the statement of evidence.)

## Petitioner's Exhibit X-1.

*Twenty Statements of Gross Production, etc.*

### MID-CONTINENT PETROLEUM CORPORATION

STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

July, 1919—Well #1 & 2

| *Date 1919* | *Daily Gross Production* | | *Gross Sales* | |
|---|---|---|---|---|
| | | | *Barrels* | *Amount* |
| *July 1* | *878.44* | | | |
| *2* | *3,595.46* | | | |
| *3* | *1,452.78* | | | |
| *4* | *2,500.00* | | | |
| *5* | *2,500.00* | [The italicized figures appear as part of | | |
| *6* | *2,684.16* | Respondent's Exhibit AP.] | | |
| *7* | *1,972.28* | | | |
| *8* | *2,000.00* | | | |
| *9* | *2,057.36* | | | |
| *10* | *2,708.40* | | | |
| *11* | *2,401.60* | | | |
| 12 | 2,500.00 | [Petitioner's Exhibit X-1 begins with daily | | |
| 13 | 2,500.00 | gross production for July 12, 1919.] | | |
| 14 | 2,500.00 | | | |
| 15 | 659.20 | | | |
| 16 | 1,180.36 | | | |
| 17 | 1,293.20 | | | |
| 18 | 1,760.16 | | | |
| 19 | 1,500.00 | | | |
| 20 | 1,500.00 | | | |
| 21 | 1,500.00 | | | |
| 22 | 1,500.00 | | | |
| 23 | 1,500.00 | | | |
| 24 | 1,500.00 | | | |
| 25 | 2,286.94 | | | |
| 26 | 2,753.04 | | | |
| 27 | 1,008.92 | | | |
| 28 | 1,734.68 | | | |
| 29 | 1,633.96 | | | |
| 30 | 1,500.00 | | | |
| 31 | 2,025.26 | | | |
| | 59,086.20 | | 58,895.06 | $132,513.88 |

Well #2 completed 7-10-19

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

August—Wells #1 & 2

| Date 1919 | Daily Gross Production | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|
| Aug. 1 | 1,484.44 | | |
| 2 | 1,533.04 | | |
| 3 | 1,468.48 | | |
| 4 | 1,520.80 | | |
| 5 | 1,409.08 | | |
| 6 | 1,359.32 | | |
| 7 | 1,486.04 | | |
| 8 | 1,299.76 | | |
| 9 | 1,170.44 | | |
| 10 | 1,172.96 | | |
| 11 | 899.56 | | |
| 12 | 887.22 | | |
| 13 | 849.90 | | |
| 14 | 743.08 | | |
| 15 | 849.92 | | |
| 16 | 812.64 | | |
| 17 | 810.16 | | |
| 18 | 803.66 | | |
| 19 | 558.10 | | |
| 20 | 406.40 | | |
| 21 | 849.92 | | |
| 22 | 934.32 | | |
| 23 | 857.40 | | |
| 24 | 850.00 | | |
| 25 | 850.00 | | |
| 26 | 444.68 | | |
| 27 | 673.50 | | |
| 28 | 593.92 | | |
| 29 | 606.30 | | |
| 30 | 650.00 | | |
| 31 | 468.24 | | |
| | 29,303.28 | 30,390.42 | $68,378.45 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

### September, 1919—Wells #1 & 2

| *Date 1919* | *Daily Gross Production* | *Gross Sales* | |
|---|---|---|---|
| | | *Barrels* | *Amount* |
| Sept. 1 | 521.80 | | |
| 2 | 487.04 | | |
| 3 | 566.64 | | |
| 4 | 556.64 | | |
| 5 | 511.94 | | |
| 6 | 482.06 | | |
| 7 | 464.72 | | |
| 8 | 500.00 | | |
| 9 | 494.06 | | |
| 10 | 412.52 | | |
| 11 | 450.00 | | |
| 12 | 362.60 | | |
| 13 | 526.84 | | |
| 14 | 526.84 | | |
| 15 | 741.88 | | |
| 16 | 432.36 | | |
| 17 | 477.12 | | |
| 18 | 400.12 | | |
| 19 | 429.60 | | |
| 20 | 377.80 | | |
| 21 | 400.00 | | |
| 22 | 400.00 | | |
| 23 | 241.32 | | |
| 24 | 293.24 | | |
| 25 | 300.00 | | |
| 26 | 204.60 | | |
| 27 | 355.28 | | |
| 28 | 300.00 | | |
| 29 | 300.00 | | |
| 30 | 163.08 | | |
| | 12,680.10 | 13,100.26 | $29,475.59 |

LS-MT

1902

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

October, 1919—Wells #1 & 2

| Date 1919 | Daily Gross Production | Gross Sales | |
|---|---|---|---|
| | | Barrels | Amount |
| Oct. 1 | 228.64 | | |
| 2 | 250.00 | | |
| 3 | 250.00 | | |
| 4 | 250.00 | | |
| 5 | .48 | | |
| 6 | 208.72 | | |
| 7 | 151.54 | | |
| 8 | 166.52 | | |
| 9 | 161.52 | | |
| 10 | 168.92 | | |
| 11 | 131.68 | | |
| 12 | 188.96 | | |
| 13 | 144.08 | | |
| 14 | 144.18 | | |
| 15 | 141.62 | | |
| 16 | 134.16 | | |
| 17 | 92.00 | | |
| 18 | 109.36 | | |
| 19 | 134.16 | | |
| 20 | 120.00 | | |
| 21 | 116.22 | | |
| 22 | 64.62 | | |
| 23 | 181.46 | | |
| 24 | 114.32 | | |
| 25 | 153.90 | | |
| 26 | 106.78 | | |
| 27 | 94.48 | | |
| 28 | 67.08 | | |
| 29 | 196.40 | | |
| 30 | 193.80 | | |
| 31 | 161.50 | | |
| | 4,627.10 | 4,497.88 | $10,120.23 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

### November, 1919—Wells #1, 2 & 4

| Date 1919 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| Nov. 1 | 173.94 | | | |
| 2 | 126.74 | | | |
| 3 | 119.34 | | | |
| 4 | 120.00 | | | |
| 5 | 31.56 | | | |
| 6 | 120.00 | | | |
| 7 | 120.00 | | | |
| 8 | 120.00 | | | |
| 9 | 120.00 | | | |
| 10 | 137.08 | | | |
| 11 | 120.00 | | | |
| 12 | 60.00 | | | |
| 13 | 60.00 | | | |
| 14 | 60.00 | | | |
| 15 | 60.00 | | | |
| 16 | 60.00 | | | |
| 17 | 60.00 | | | |
| 18 | 45.30 | | | |
| 19 | 60.00 | | | |
| 20 | 61.06 | | | |
| 21 | 60.00 | | | |
| 22 | 60.00 | | | |
| 23 | 60.00 | | | |
| 24 | 110.62 | | | |
| 25 | 32.22 | | | |
| 26 | 34.84 | | | |
| 27 | 30.00 | | | |
| 28 | 30.00 | | | |
| 29 | 30.00 | | | |
| 30 | 30.00 | | | |
| | 3.80 | Correction | | |
| | 1,848.18 | | 2,296.02 | $5,355.52 |

Well #4 completed 11-20-19

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

### December, 1919—Wells #1, 2 & 4

| Date 1919 | Daily Gross Production | Gross Sales | |
|---|---|---|---|
| | | Barrels | Amount |
| Dec. 1 | 30.00 | | |
| 2 | 30.00 | | |
| 3 | 30.00 | | |
| 4 | 198.86 | | |
| 5 | 30.00 | | |
| 6 | 30.00 | | |
| 7 | 30.00 | | |
| 8 | 56.56 | | |
| 9 | 30.00 | | |
| 10 | 30.00 | | |
| 11 | 51.84 | | |
| 12 | 30.00 | | |
| 13 | 30.00 | | |
| 14 | 30.00 | | |
| 15 | 30.00 | | |
| 16 | 30.00 | | |
| 17 | 30.00 | | |
| 18 | 30.00 | | |
| 19 | 30.00 | | |
| 20 | 30.00 | | |
| 21 | 30.00 | | |
| 22 | 30.00 | | |
| 23 | 45.10 | | |
| 24 | 10.00 | | |
| 25 | 30.00 | | |
| 26 | 30.00 | | |
| 27 | 30.00 | | |
| 28 | 30.00 | | |
| 29 | 30.00 | | |
| 30 | 30.00 | | |
| 31 | 70.92 | | |
| | 1,183.28 | 1,242.40 | $3,196.08 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

**January, 1920—Wells #1, 2 & 4**

| Date 1920 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| Jan. 1 | 30.00 | | | |
| 2 | 30.00 | | | |
| 3 | 9.53 | | | |
| 4 | 62.22 | | | |
| 5 | 30.00 | | | |
| 6 | 30.00 | | | |
| 7 | 30.00 | | | |
| 8 | 30.00 | | | |
| 9 | 30.00 | | | |
| 10 | 30.00 | | | |
| 11 | 30.00 | | | |
| 12 | 30.00 | | | |
| 13 | 30.00 | | | |
| 14 | 30.00 | | | |
| 15 | 30.00 | | | |
| 16 | 30.00 | | | |
| 17 | 30.00 | | | |
| 18 | 30.00 | | | |
| 19 | 30.00 | | | |
| 20 | 30.00 | | | |
| 21 | 30.00 | | | |
| 22 | 30.00 | | | |
| 23 | 30.00 | | | |
| 24 | 30.00 | | | |
| 25 | 30.00 | | | |
| 26 | 50.00 | | | |
| 27 | 50.00 | | | |
| 28 | 330.00 | | | |
| 29 | 50.00 | | | |
| 30 | 50.00 | | | |
| 31 | 50.00 | | | |
| | 253.59 | Cor. Adjustment | | |
| | 1,595.34 | | 1,170.40 | $3,511.20 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

### February, 1920—Wells #1, 2 & 4

| Date 1920 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| Feb. 1 | 50.00 | | | |
| 2 | 50.00 | | | |
| 3 | 50.00 | | | |
| 4 | 50.00 | | | |
| 5 | 50.00 | | | |
| 6 | 50.00 | | | |
| 7 | 50.00 | | | |
| 8 | 50.00 | | | |
| 9 | 50.00 | | | |
| 10 | 50.00 | | | |
| 11 | 50.00 | | | |
| 12 | 50.00 | | | |
| 13 | 50.00 | | | |
| 14 | 50.00 | | | |
| 15 | 50.00 | | | |
| 16 | 50.00 | | | |
| 17 | 50.00 | | | |
| 18 | 50.00 | | | |
| 19 | 31.96 | | | |
| 20 | 34.78 | | | |
| 21 | 50.00 | | | |
| 22 | 50.00 | | | |
| 23 | 50.00 | | | |
| 24 | .90 | | | |
| 25 | 47.24 | | | |
| 26 | 54.68 | | | |
| 27 | 54.62 | | | |
| 28 | 44.76 | | | |
| 29 | 44.70 | | | |
| | .10 | Adj. for Month | | |
| | 1,361.74 | | 1,165.46 | $3,496.38 |

LS-MT

*Petitioner's Exhibit X-1.*

# MID-CONTINENT PETROLEUM CORPORATION

## STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

### March, 1920—Wells #1, 2 & 4

| *Date 1920* | *Daily Gross Production* | *Gross Sales* | |
|---|---|---|---|
| | | *Barrels* | *Amount* |
| Mar. 1 | 42.28 | | |
| 2 | 39.74 | | |
| 3 | 24.86 | | |
| 4 | 42.28 | | |
| 5 | 29.82 | | |
| 6 | 49.70 | | |
| 7 | 19.86 | | |
| 8 | —0— | | |
| 9 | 14.94 | | |
| 10 | 14.88 | | |
| 11 | 12.46 | | |
| 12 | 20.00 | | |
| 13 | 12.68 | | |
| 14 | 12.46 | | |
| 15 | 9.92 | | |
| 16 | 9.96 | | |
| 17 | 7.46 | | |
| 18 | 7.44 | | |
| 19 | 7.44 | | |
| 20 | 7.48 | | |
| 21 | 7.46 | | |
| 22 | 7.44 | | |
| 23 | 7.44 | | |
| 24 | 7.48 | | |
| 25 | 7.46 | | |
| 26 | 7.00 | | |
| 27 | 46.80 | | |
| 28 | ..... | | |
| 29 | ..... | | |
| 30 | ..... | | |
| 31 | ..... | | |
| | 357.78 | 1,063.48 | $3,722.17 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

### April, 1920—Wells #1, 2 & 4

| *Date 1920* | *Daily Gross Production* | | *Gross Sales* | |
|---|---|---|---|---|
| | | | *Barrels* | *Amount* |
| Apr. 1 | ..... | Not Reported | | |
| 2 | ..... | | | |
| 3 | ..... | No Prod. | | |
| 4 | ..... | | | |
| 5 | ..... | | | |
| 6 | ..... | Prod. in Flow tk. | | |
| 7 | ..... | Not Reported | | |
| 8 | ..... | | | |
| 9 | ..... | | | |
| 10 | ..... | | | |
| 11 | ..... | Prod. in Flow tk. | | |
| 12 | ..... | " | | |
| 13 | ..... | " | | |
| 14 | ..... | " | | |
| 15 | ..... | " | | |
| 16 | ..... | " | | |
| 17 | ..... | " | | |
| 18 | ..... | " | | |
| 19 | ..... | " | | |
| 20 | ..... | " | | |
| 21 | ..... | " | | |
| 22 | 186.12 | Prod. from Flow tk. | | |
| 23 | 2.52 | | | |
| 24 | ..... | Not Reported | | |
| 25 | ..... | " | | |
| 26 | 9.32 | 2 days Prod. | | |
| 27 | ..... | Not Reported | | |
| 28 | ..... | " | | |
| 29 | 17.42 | 3 days Prod. | | |
| 30 | 9.92 | | | |
| | 1.42 | Cor. for Month | | |
| | 223.88 | | 141.86 | $496.51 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

### May, 1920—Wells #1, 2 & 4

| Date 1920 | Daily Gross Production | | Gross Sales | |
|---|---|---|---|---|
| | | | Barrels | Amount |
| May 1 | ..... | Not Reported | | |
| 2 | 7.44 | | | |
| 3 | ..... | " | | |
| 4 | 14.94 | | | |
| 5 | ..... | " | | |
| 6 | ..... | " | | |
| 7 | ..... | " | | |
| 8 | ..... | " | | |
| 9 | ..... | " | | |
| 10 | ..... | " | | |
| 11 | ..... | " | | |
| 12 | 36.48 | 8-das. Prod. | | |
| 13 | 2.52 | Well #2 & 4 Off | | |
| 14 | ..... | Not Reported | | |
| 15 | ..... | " | | |
| 16 | ..... | " | | |
| 17 | ..... | " | | |
| 18 | ..... | " | | |
| 19 | 28.08 | 6-das. Prod. | | |
| 20 | 2.72 | #1, 2 & 4 Off | | |
| 21 | 2.48 | " | | |
| 22 | ..... | " | | |
| 23 | ..... | Not Reported | | |
| 24 | ..... | " | | |
| 25 | ..... | " | | |
| 26 | 17.18 | 4-das. Prod. | | |
| 27 | ..... | Not Reported | | |
| 28 | ..... | " | | |
| 29 | ..... | " | | |
| 30 | ..... | " | | |
| 31 | 10.84 | Correction for Mo. | | |
| | 122.68 | | 169.86 | $594.51 |

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

### June, 1920—Wells #1, 2 & 4

| Date 1920 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| June 1 | ..... | Not Reported | | |
| 2 | ..... | " | | |
| 3 | ..... | " | | |
| 4 | ..... | " | | |
| 5 | ..... | | | |
| 6 | 116.86 | | | |
| 7 | 2.52 | | | |
| 8 | ..... | " | | |
| 9 | 7.36 | 2-das. Prod. | | |
| 10 | 2.58 | | | |
| 11 | 2.48 | | | |
| 12 | ..... | Not Reported | | |
| 13 | 9.92 | 2-das. Prod. | | |
| 14 | 2.48 | | | |
| 15 | ..... | Not Reported | | |
| 16 | 10.02 | 2-das. Prod. | | |
| 17 | ..... | Not Reported | | |
| 18 | ..... | " | | |
| 19 | ..... | | | |
| 20 | 82.02 | Cor. Field Gauge | — | |
| 21 | ..... | Not Reported | | |
| 22 | ..... | " | | |
| 23 | ..... | | | |
| 24 | 14.92 | 3-das. Prod. | | |
| 25 | 5.02 | | | |
| 26 | ..... | Not Reported | | |
| 27 | ..... | " | | |
| 28 | ..... | | | |
| 29 | 9.92 | 4-Days Prod. | | |
| 30 | ..... | No Production | | |
| | 102.06 | | —0— | —0— |

Abandoned—Well #2 6-17-20
" Well #4 6-25-20

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

### July, 1920—Well #1

| Date 1920 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| July 1 | 2.28 | | | |
| 2 | ..... | No Prod. | | |
| 3 | 2.48 | | | |
| 4 | 2.48 | | | |
| 5 | 2.48 | | | |
| 6 | ..... | Not Reported | | |
| 7 | 2.48 | | | |
| 8 | 2.52 | | | |
| 9 | 2.50 | | | |
| 10 | ..... | " | | |
| 11 | ..... | " | | |
| 12 | ..... | " | | |
| 13 | ..... | " | | |
| 14 | ..... | " | | |
| 15 | ..... | " | | |
| 16 | ..... | " | | |
| 17 | ..... | " | | |
| 18 | ..... | " | | |
| 19 | ..... | " | | |
| 20 | ..... | " | | |
| 21 | ..... | " | | |
| 22 | ..... | " | | |
| 23 | 30.08 | 14 days Prod. | | |
| 24 | ..... | Not Reported | | |
| 25 | ..... | " | | |
| 26 | ..... | " | | |
| 27 | ..... | " | | |
| 28 | ..... | " | | |
| 29 | ..... | " | | |
| 30 | ..... | " | | |
| 31 | ..... | " | | |
| | 91.94 | Adj. for mo. | | |
| | 44.64 | | 156.84 | $548.94 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

### August, 1920—Well #1

| Date 1920 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| Aug. 1 | ..... | Not Reported | | |
| 2 | ..... | " | | |
| 3 | ..... | " | | |
| 4 | ..... | " | | |
| 5 | ..... | " | | |
| 6 | 9.84 | 6 das. Prod. | | |
| 7 | ..... | Not Reported | | |
| 8 | ..... | " | | |
| 9 | ..... | " | | |
| 10 | ..... | " | | |
| 11 | 10.08 | 5 das. Prod. | | |
| 12 | ..... | Not Reported | | |
| 13 | ..... | " | | |
| 14 | 2.50 | 3 das. Prod. | | |
| 15 | ..... | Not Reported | | |
| 16 | ..... | " | | |
| 17 | ..... | " | | |
| 18 | ..... | " | | |
| 19 | ..... | " | | |
| 20 | ..... | " | | |
| 21 | ..... | " | | |
| 22 | ..... | " | | |
| 23 | ..... | " | | |
| 24 | ..... | " | | |
| 25 | ..... | " | | |
| 26 | ..... | " | | |
| 27 | ..... | " | | |
| 28 | ..... | " | | |
| 29 | ..... | " | | |
| 30 | 22.32 | 16 das. Prod. | | |
| 31 | ..... | Not Reported | | |
| | 2.52 | Cor. for Month | | |
| | 47.26 | | —0— | —0— |

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

### September, 1920—Well #1

| Date 1920 | Daily Gross Production | | Gross Sales | |
|---|---|---|---|---|
| | | | Barrels | Amount |
| Sept. 1 | 2.52 | | | |
| 2 | ..... | | | |
| 3 | ..... | | | |
| 4 | ..... | Not Reported | | |
| 5 | ..... | " | | |
| 6 | ..... | " | | |
| 7 | ..... | " | | |
| 8 | ..... | " | | |
| 9 | 4.82 | 4 days Prod. | | |
| 10 | ..... | Not Reported | | |
| 11 | ..... | " | | |
| 12 | ..... | " | | |
| 13 | ..... | " | | |
| 14 | ..... | " | | |
| 15 | ..... | No Production | | |
| 16 | 10.08 | 3 days Prod. | | |
| 17 | ..... | Not Reported | | |
| 18 | ..... | " | | |
| 19 | ..... | " | | |
| 20 | ..... | " | | |
| 21 | ..... | Bailing Water Out | | |
| 22 | ..... | Not Reported | | |
| 23 | 2.48 | 4 days Prod. | | |
| 24 | ..... | Not Reported | | |
| 25 | ..... | " | | |
| 26 | ..... | " | | |
| 27 | ..... | " | | |
| 28 | ..... | " | | |
| 29 | 2.48 | Shrinkage | | |
| 30 | ..... | Not Reported | | |
| | 17.42 | | —0— | —0— |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

October, 1920—Well #1

| Date 1920 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| Oct. 1 | ..... | Not Reported | | |
| 2 | ..... | " | | |
| 3 | ..... | " | | |
| 4 | 2.48 | Shrinkage | | |
| 5 | ..... | Not Reported | | |
| 6 | 4.96 | 4 days Prod. | | |
| 7 | ..... | Not Reported | | |
| 8 | ..... | " | | |
| 9 | ..... | " | | |
| 10 | 9.96 | 4 das. Prod. | | |
| 11 | ..... | Not Reported | | |
| 12 | ..... | " | | |
| 13 | ..... | " | | |
| 14 | ..... | " | | |
| 15 | ..... | " | | |
| 16 | ..... | " | | |
| 17 | 7.50 | 6 das. Prod. | | |
| 18 | ..... | Not Reported | | |
| 19 | ..... | " | | |
| 20 | ..... | " | | |
| 21 | ..... | " | | |
| 22 | 2.48 | 4 das. Prod. | | |
| 23 | ..... | Not Reported | | |
| 24 | ..... | " | | |
| 25 | ..... | " | | |
| 26 | ..... | " | | |
| 27 | ..... | " | | |
| 28 | 4.96 | Shrinkage | | |
| 29 | ..... | Not Reported | | |
| 30 | ..... | " | | |
| 31 | ..... | " | | |
| | 17.46 | | —0— | —0— |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

### November, 1920—Well #1

| *Date 1920* | *Daily Gross Production* | | *Gross Sales* | |
|---|---|---|---|---|
| | | | *Barrels* | *Amount* |
| Nov. 1 | ..... | Not Reported | | |
| 2 | ..... | " | | |
| 3 | ..... | " | | |
| 4 | ..... | " | | |
| 5 | ..... | Pulling Rods | | |
| 6 | ..... | Not Reported | | |
| 7 | ..... | " | | |
| 8 | ..... | " | | |
| 9 | ..... | Pumping Water | | |
| 10 | ..... | " | | |
| 11 | ..... | " | | |
| 12 | ..... | " | | |
| 13 | ..... | " | | |
| 14 | ..... | " | | |
| 15 | ..... | " | | |
| 16 | ..... | " | | |
| 17 | ..... | Not Reported | | |
| 18 | ..... | Pumping Water | | |
| 19 | ..... | Not Reported | | |
| 20 | ..... | " | | |
| 21 | ..... | " | | |
| 22 | ..... | Waiting on Orders | | |
| 23 | ..... | Not Reported | | |
| 24 | ..... | " | | |
| 25 | ..... | " | | |
| 26 | ..... | " | | |
| 27 | ..... | " | | |
| 28 | ..... | " | | |
| 29 | 1.24 | 5 das. Prod. | | |
| 30 | ..... | Not Reported | | |
| | 1.24 | | 58.48 | $204.68 |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

### December, 1920—Well #1

| Date 1920 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| Dec. 1 | ..... | Waiting on Orders | | |
| 2 | ..... | " | | |
| 3 | ..... | Not Reported | | |
| 4 | ..... | " | | |
| 5 | ..... | " | | |
| 6 | ..... | Waiting on Orders | | |
| 7 | ..... | " | | |
| 8 | ..... | Not Reported | | |
| 9 | ..... | Waiting on Orders | | |
| 10 | ..... | Not Reported | | |
| 11 | ..... | " | | |
| 12 | ..... | Waiting on Orders | | |
| 13 | ..... | Not Reported | | |
| 14 | ..... | Abandoning Well #1 | | |
| 15 | ..... | Not Reported | | |
| 16 | ..... | " | | |
| 17 | ..... | " | | |
| 18 | ..... | " | | |
| 19 | ..... | " | | |
| 20 | ..... | " | | |
| 21 | ..... | " | | |
| 23 | ..... | " | | |
| 24 | ..... | " | | |
| 25 | ..... | " | | |
| 26 | ..... | " | | |
| 27 | ..... | " | | |
| 28 | ..... | " | | |
| 29 | ..... | " | | |
| 30 | 67.26 | Cleaning Tk. | | |
| 31 | ..... | | | |
| | 67.26 | | —0— | —0— |

LS-MT

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

### Well #1

| Date 1921 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| Jan. | ..... | Not Reported | —0— | —0— |
| Feb. | ..... | " | —0— | —0— |
| Mar. | ..... | " | —0— | —0— |
| Apr. | ..... | " | —0— | —0— |
| May | ..... | " | —0— | —0— |
| June | ..... | " | —0— | —0— |
| July | ..... | " | —0— | —0— |
| Aug. | ..... | " | —0— | —0— |
| Sept. 8 | 2.56 | Bbls. Moved tank | —0— | —0— |
| | | Waiting on new Tank | | |
| Total | 2.56 | | | |
| Oct. 1 to 30th | ..... | Not Reported | —0— | —0— |
| 31 | 2.56 | Bbls. Cor. for Mo. | | |
| Total | 2.56 | " | | |
| Nov. | ..... | Not Reported | —0— | —0— |
| | | No Production | | |
| Dec. | ..... | Not Reported | —0— | —0— |
| | | No Production | | |

*Petitioner's Exhibit X-1.*

## MID-CONTINENT PETROLEUM CORPORATION

STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE, ERATH COUNTY, TEXAS

Well #1

| *Date 1922* | *Daily Gross Production* | | *Gross Sales* *Barrels* | *Amount* |
|---|---|---|---|---|
| Jan. | ..... | Not Reported | —0— | —0— |
| Feb. | 5.12 | Bbls. Tank Cleaned | —0— | —0— |
| Mar. | ..... | No Production | —0— | —0— |
| GRAND TOTAL | 123,866.34 | Bbls. | 123,866.34 | $283,029.46 |

#1 Abd. 3-20-22

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**Petitioner's Exhibit X-2.**

## MID-CONTINENT PETROLEUM CORPORATION

GAS SALES
W. R. CARRUTH (20-A) LEASE
ERATH COUNTY, TEXAS

| *Month* | | *Gross Amount* |
|---|---|---|
| 1919 | | |
| July | ..... | $1,057.50 |
| Aug. | ..... | 742.50 |
| Dec. | ..... | 375.00 $2,175.00 |
| 1920 | | |
| Jan. | ..... | $ 105.00 |
| Mar. | ..... | 72.00 |
| Apr. | ..... | 210.00 387.00 |
| | | $2,562.00 |

NOTE: Above gas sold for drilling purposes and for operations on adjoining leases.

FB-MT

## Petitioner's Exhibit X-3.

STATEMENT OF EXPENDITURES AND REVENUE ON THE W. R. CARRUTH LEASES

| | 20 Acre Lease | | 15 Acre Lease | |
|---|---|---|---|---|
| INVESTMENT: | | | | |
| Leasehold Cost | $ 19,153.93 | | $18,361.62 | |
| Equipment | 84,258.72 | | 19,327.37 | |
| Total Investment | | $103,412.65 | | $37,688.99 |
| EXPENSE: | | | | |
| Drilling | $ 63,564.36 | | $15,792.81 | |
| Operating Expense | 27,941.95 | | 4,958.32 | |
| Overhead | 106,507.16 | | 3,732.89 | |
| Total Expense | | 198,013.47 | | 24,484.02 |
| Total Investment and Expense | | $301,426.12 | | $62,173.01 |
| REVENUE: | | | | |
| Oil Sales | $247,650.85 | | $10,200.12 | |
| Gas Sales | 2,299.88 | | ..... | |
| Total Revenue | | $249,950.73 | | $10,200.12 |
| Excess of Expenditures over Revenue | | $ 51,475.39 | | $51,972.89 |
| NET PRODUCTION (Barrels) | 108,383.07 | | 4,518.81 | |

## Petitioner's Exhibit X-4.

STATEMENT OF EQUIPMENT AND DRILLING COSTS

CARRUTH LEASES

| | W. R. Carruth 20 Acres | | | | | | |
|---|---|---|---|---|---|---|---|
| | Well #1 | Well #2 | Well #3 | Well #4 | Well #7 | Miscellaneous | Total |
| Rigs | $ 4,330.00 | $ 3,432.99 | $3,497.66 | $ 4,639.55 | $3,802.10 | $ ..... | $ 19,702.30 |
| Drilling Costs | 27,486.15 | 10,766.35 | 199.82 | 24,756.95 | 355.09 | ..... | 63,564.36 |
| Tanks | ..... | ..... | ..... | ..... | ..... | 9,177.73 | 9,177.73 |
| Engines & Pumps | 1,535.08 | 1,617.76 | ..... | ..... | ..... | ..... | 3,152.84 |
| Casing | 17,339.75 | 9,342.57 | 30.41 | 12,274.92 | ..... | 84.30 | 39,071.95 |
| Pumping Equipment | 658 18 | 1,003.77 | ..... | 111.97 | ..... | ..... | 1,773.92 |
| Line Pipe | ..... | ..... | ..... | ..... | ..... | 7,608.86 | 7,608.86 |
| Other Equipment | 1,514.89 | 925.63 | ..... | 389.70 | 23.61 | 917.29 | 3,771.12 |
| | $52,864.05 | $27,089.07 | $3,727.89 * | $42,173.09 | $4,180.80 * | $17,788.18 | $147,823.08 |

* Locations abandoned, on Carruth 20 Acres—Wells #3 & #7.

## Respondent's Exhibit A.

Receipt, signed by J. L. Kirkland, dated August 27, 1919.

(Set out in full in the statement of evidence; see page 712, *ante*.)

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## Respondent's Exhibit B.

SEPT. 21—1920

| | | | |
|---|---|---|---|
| 2 | W. E. Wrather | 1 206 08 | |
| 4 | J. B. Lantz | 1 206 08 | |
| 6 | J. L. Kirkland | 1 809 10 | |
| 8 | F. B. Parriott | 1 809 10 | |
| 10 | M. L. Benedum | 3 618 25 | |
| 43 | Tex-Penn Oil Co. | | 9 648 61 |
| | To chge individual accounts and cr. T-P. with amount of bills pd. by T-P. during 1920 per statement see V* 75a the above individuals being responsible for debts incurred by Tex-Penn Oil Co. | | |

DEC. 31—1920

| | | | |
|---|---|---|---|
| 2 | W. E. Wrather | 148 23 | |
| 4 | J. B. Lantz | 148 23 | |
| 6 | J. L. Kirkland | 222 35 | |
| 8 | F. B. Parriott | 222 35 | |
| 10 | M. L. Benedum | 444 70 | |
| 30 | Tex-Penn Ind. Fund | | 1 185 86 |
| | To properly distribute expenses paid for a/c of Tex-Penn Oil Co. to date. | | |

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## Respondent's Exhibit C.

Oil and Gas Lease—Typical lease instrument covering Duke-Knoles block of leases.

(Substance recited in statement of evidence; see page 741, *ante;* see folder of unprinted exhibits.)

## Respondent's Exhibit D.

Tabulation of Leases covering Duke-Knoles properties. (See folder of unprinted exhibits.)

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## Respondent's Exhibit E.

June 24, 1919.

Messrs. M. L. Benedum & F. B. Parriott,
Benedum-Trees Building,
Pittsburgh, Pa.

Gentlemen:—

In confirmation of our previous understanding, we beg to say that we and our associates have acquired for you an option on oil land and leases on oil lands in South America as follows:—

1. An option to purchase in fee two tracts of land containing approximately forty-eight hundred thirty-two (4832) acres, known as the Estate of "Giaocaramo," in the Municipality of Medina, Department of Cundinamarca, Colombia.

2. An oil and gas lease upon approximately twenty thousand (20,000) acres of land, known as the Estate of "Mesa de Cura," in the same Municipality and Department.

3. An oil and gas lease upon approximately thirty thousand (30,000) additional acres in the immediate vicinity of the above described tract.

4. Oil and gas leases on two estates known respectively as "Santa Rosa Del Arenal" and "San Bartolomeo de la Honda," in the Municipality of Morales, Department of Bolivar, Colombia, containing approximately seven hundred fifty thousand (750,000) acres.

The foregoing holdings are to be transferred to you, or to your assignees, upon the understanding that the title to them will be ultimately vested in a corporation to be organized for the purpose, which corporation shall issue its entire authorized stock as a consideration for said holdings, one-fifth (1/5) of said stock to belong to us and our associates, and four-fifths (4/5) to you or your assigns. It is understood that such proposed corporation shall have a capitalization of not less than 500,000 shares, with or without nominal or par value, as you decide. If any of the leases or options comprising these holdings provide that the owners of the land shall receive, as part consideration, the capital stock of a corporation, and if it becomes necessary to organize an additional company or companies subsidiary to the company just mentioned, in order that such consideration may be equitably represented by shares of corporate stock, you may take title to any such leases or property through the medium of such subsidiary company or companies.

At the time of the assignment of the leases and the transfer of the option, we are to be paid One hundred thousand ($100,000) Dollars in cash; we are to pay the expenses of acquiring the leases, and you or your assigns are to carry out the terms thereof.

The arrangements for the acquisition of these holdings have been completed, although the title papers have not arrived in the United States, some of them being in transit, and some of them still awaiting execution in South America.

*Respondent's Exhibit E.*

Please confirm this understanding by noting your acceptance thereof on the duplicate original of this letter and returning it to us.

Very truly yours,

L. RESTREPO
J. W. LEONARD

Accepted:

M. L. BENEDUM
F. B. PARRIOTT

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**Respondent's Exhibit F.**

Certificate and amended Certificate of Incorporation of Transcontinental Oil Company.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit G.**

Letter, dated July 22, 1919, addressed to Tex-Penn Oil Company by M. L. Benedum and F. B. Parriott, relating to Sutton and Oldham County, and South American properties.

(Substance recited in statement of evidence; see page 742, *ante.*)

## Respondent's Exhibit H.

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS

OF

TEX-PENN OIL COMPANY

A special meeting of the Board of Directors of the Tex-Penn Oil Company was held at the Company's office in the Benedum-Trees Bldg., Pittsburgh, Pa. on Wednesday, July 23rd, 1919 at 10:00 A. M., pursuant to the following call and waiver of notice signed by all of the members of the Board.

CALL AND WAIVER

We, the undersigned, being all of the Directors of the Tex-Penn Oil Company, hereby call a special meeting of said Board to be held at the office of the Company in the Benedum-Trees Bldg., Pittsburgh, Pa. on July 23rd, 1919 at 10:00 A. M. for the purpose of electing officers of the Company, and for the purpose of considering and acting upon a proposal to issue all of the present authorized and unissued stock of this Company in consideration of the assignment to this Company of certain oil holdings in Texas and South America; and we hereby waive all notice of said meeting.

F. B. PARRIOTT
GEORGE J. WOLF
E. D. ROBINSON
S. E. DRUM
C. F. EHRENTRAUT

All of the members of the Board were present.

Mr. F. B. Parriott, the President of the Company, presided and Miss S. E. Drum acted as Secretary.

The President stated that there were vacancies in the offices of Vice-President and Secretary & Treasurer of the Company and that it was in order to fill these vacancies.

Upon motion duly seconded and unanimously carried, Mr. G. J. Wolf was elected Vice-President of the Company.

Upon motion duly seconded and unanimously carried, Mr. E. D. Robinson was elected Secretary & Treasurer of the Company.

The President stated that the Secretary would bring before the meeting, a proposal from Mr. M. L. Benedum and himself to transfer to the Company, all their right, title and interest in a contract for the acquisition of four-fifths (4/5ths) of the working interest in certain leases, options etc. on upwards of 800,000 acres of land in South America, and the entire working interest in leases on approximately 33,000 acres of land in Sutton and Oldham Counties, Texas, in consideration of the issuance to them of the balance of the authorized and unissued stock of the Company; and stated that he desired to withdraw from the meeting when such proposal is being acted upon.

Whereupon Mr. Parriott withdrew from the meeting and Mr. G. J. Wolf presided for the balance of the meeting.

The Secretary presented to the meeting a letter from Mr. M. L. Benedum and Mr. F. B. Parriott, a copy of which was ordered spread upon the minutes of the meeting, which is accordingly done as follows:

"Pittsburgh, Pa., July 22, 1919.

Gentlemen:

We have acquired oil leases on approximately 33,000 acres of land in Sutton and Oldham Counties, Texas and have entered into a contract for the acquisition of four-fifths (4/5ths) of the working oil interests in approximately 800,000 acres of land in South America, which we offer to transfer to your Company in consideration of the issuance to us of the balance of the authorized and unissued Capital Stock of your Company, to-wit; $1,672,000.00 par value; consisting of 66,880 shares of the par value of $25.00 each. The

interest to be transferred to you in consideration of this Stock consists of the following:

1. All our right, title and interest in and to the entire oil and gas lease and leasehold estates in and upon the following described premises, situate in the County of Oldham, State of Texas to-wit:—

The Southwest quarter of survey #140, being 160-1/4 acres out of Capital League 249 of the Subdivision made by W. D. Twichel shown of record in the deed records of Oldham County, Texas in Vol. 7, page 60, and which is described in the original lease to W. J. Dieringer from R. T. and Missouri Smith dated June 9, 1919 and recorded in Oldham County deed records in Vol. 19, page 434, and assigned by W. J. Dieringer to F. B. Parriott by assignment dated July 12, 1919, about to be recorded.

2. All our right, title and interest in a Schedule of Oil and Gas leases attached to this letter, marked 'Exhibit A.'

3. All our right, title and interest in and to a certain contract dated June 24, 1919 with J. W. Leonard and L. Restrepo, for the acquisition by us of four-fifths (4/5ths) of the working interest in leases on approximately 810,000 acres of land in South America, a copy of which is hereby attached.

At the time of transfer of title, as in said Contract provided, we will pay the $100,000.00 cash consideration therein provided for.

Very truly yours,

(Signed) M. L. BENEDUM
" F. B. PARRIOTT"

*Respondent's Exhibit H.*

Upon motion duly made and seconded, it was unanimously

RESOLVED that the offer contained in the foregoing letter of Messrs. M. L. Benedum and F. B. Parriott be, and it is hereby accepted by this Company; that the consideration moving to this Company under such offer has a value exceeding the value of $1,672,000. and that upon the proper assignment to this Company of the leases in Sutton and Oldham Counties, Texas referred to in such offer, and upon the assignment to this Company of all right, title and interest in and to said contract with J. W. Leonard and L. Restrepo, the officers of this Company be and they are hereby authorized and directed to issue jointly to M. L. Benedum and F. B. Parriott, $1,672,000 par value of the Stock of this Company, full paid and non-assessable, to-wit; 66,880 shares of the par value of $25.00 each.

Upon motion duly seconded and carried, it was ordered that the schedule of leases and contract accompanying the letter of Messrs. Benedum and Parriott, be filed by the Secretary with the papers of this Company.

On motion duly seconded, the meeting adjourned.

S. E. DRUM
Sec'y.

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**Respondent's Exhibit I.**

Assignment to Tex-Penn Oil Company of Sutton County lease, dated July 24, 1919, signed F. B. Parriott.

(Substance recited in statement of evidence; see page 743, *ante.*)

## Respondent's Exhibit J.

Assignment of Oldham County lease to Tex-Penn Oil Company, dated July 24, 1919, signed F. B. Parriott.

(Substance recited in statement of evidence; see page 743, *ante*.)

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## Respondent's Exhibit K.

### TRANSCONTINENTAL OIL COMPANY

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS HELD JULY 25TH, 1919.

Minutes of a Special Meeting of the Board of Directors of the Transcontinental Oil Company, held at the office of the Company in the Benedum-Trees Building, Pittsburgh, Pennsylvania, on Friday, July 25th, 1919 at 3:30 P. M.

Present, Mr. George J. Wolf,
A. B. Dally, Jr.,
S. A. McCaskey,
Edw. Kippax,

being a quorum of the Board.

No chairman of the Board having been elected, Mr. Dally, President of the company presided and Mr. McCaskey acted as Secretary.

The secretary presented and read the attached waiver of notice of the meeting, signed by all the Directors.

The secretary presented to the meeting a letter dated June 17th, 1919 to the company, from Prichitt & Co. of New York, Bankers, and E. W. Clark & Co. of Philadelphia, Bankers; and a copy of the letter referred to in the first paragraph of said letter, written by Mr. F. B. Parriott to said bankers on June 17th, 1919.

Upon motion, duly made and seconded, it was unanimously

RESOLVED that copies of the papers just presented to the meeting be spread in full in the minutes thereof, which insertions are accordingly made as follows:

June 17th, 1919.

TRANSCONTINENTAL OIL COMPANY, a corporation of Delaware, if, as and when organized:

Gentlemen:

We understand from negotiations which have been proceeding between Mr. M. L. Benedum and associates and ourselves, that your company is about to be organized under the laws of the State of Delaware with an authorized and issued capital of 2,000,000 shares of stock without nominal or par value, to acquire and take over all of the properties of the Tex-Penn Oil Company (including all outstanding fractional interests in its leases in what is known as "Duke-Knoles Pool"), Pittsburgh-Texas Oil & Gas Company, Riverside Eastern Oil Company, Riverside Western Oil Company, and their several subsidiaries, a description of the several properties of your company as they will exist when its organization and incidental proceedings are completed being contained in a letter written to us under even date, signed by Mr. F. B. Parriott.

Subject to the approval of our counsel (a) as to the organization of the new company, (b) the legality of the issuance of its stock, and (c) the legality of the acquirement by it of title to its several properties, we are willing to purchase from you 500,000 shares of the capital stock of your company at and for the price of $40. per share, amounting in the aggregate to $20,000,000., and to form and organize a syndicate to purchase and market the same at the price named, IT BEING UNDERSTOOD that the entire proceeds of such sale are to be used and employed by you as working capital and in the acquirement of properties.

For our services to be rendered to you in organizing such Syndicate and selling and disposing of said stock, we are

to have and receive a bankers' commission of 25,000 shares of the capital stock of your company and in addition thereto, and as further compensation, the right, option and privilege at any time on or before January 31st, 1920, to purchase from you all or any part of 225,000 additional shares of the capital stock of your company at and for the price of $1. per share. Said 225,000 shares of stock are to be duly issued by you and deposited in escrow with Messrs. B. Y. Frost & Co., No. 80 Broadway, New York City, to be delivered by them to us at such times, from time to time, and in such amounts as we may elect, against payment therefor by us at $1. per share, any stock not taken up and paid for by us under such option prior to the expiration date thereof to be returned to you. Our right to exercise said option in whole or in part is in any event conditioned on our having first taken up and paid for, or caused to be taken up and paid for, said 500,000 shares at $40. per share.

With regard to the 500,000 shares firm purchase, we agree that upon 7 days' written notice to be given by you to us that your company is duly organized, that temporary certificates of its stock are ready for delivery to us or our nominees, and that all things have been done and appropriate papers drawn and executed immediately to vest in your company title to the various properties it is to acquire, we will make payment for said 500,000 shares, aggregating $20,000,000. as herein provided.

In connection with the question of the approval of our counsel the following is understood:

1. That our counsel shall co-operate with yours in order that any objections they may have may be presented at the earliest possible moment and expedition secured:

2. The titles which your company is to secure are the titles as they are of the various companies mentioned above,

and the titles of the owners of the outstanding fractional working interests mentioned above in the "Duke-Knoles" pool:

3. That there cannot possibly be any outstanding objecting minority interests in the Tex-Penn Company properties, or as to the fractional working interests in the leases of that company mentioned above in the "Duke-Knoles" pool. There are certain stocks of the other three companies, however, that are outstanding on the market, and while there is no reason to expect any objections by any of these outstanding minority stockholders, yet there may be such, and if serious objection develops in the way of obstructing litigation, there is to be co-operation between us to overcome the difficulty created thereby.

All expenses incident to the organization of your company and the acquisition of its properties and the issuance of its stock are to be borne by you: all expenses in marketing the stock and the fees of our counsel are to be borne by us.

At the time of settlement for the 500,000 shares firm purchase as hereinabove provided, you are likewise to deliver to us the 25,000 shares of stock constituting our banking commission, and simultaneously therewith, are to deliver to Messrs. B. Y. Frost & Co., 80 Broadway, New York City, certificates representing 225,000 shares of stock upon which we are given an option as hereinbefore provided, which said certificates shall be duly stamped and endorsed for transfer so as to be negotiable by delivery.

As it is our purpose immediately to organize a Syndicate for the purchase of said 500,000 shares of the stock of your company "if, as and when the same are issued and delivered to us," we would thank you to take the necessary corporate action to accept this contract at the earliest possible moment, communicating such action to us by having the appropriate officers of your company sign the

duplicate-original of this letter beneath the words "approved and accepted," and returning the same to us, whereupon this letter and such duplicate-original thereof so signed in the name of your company, shall constitute the agreement between us.

Very truly yours,

PRICHITT & CO.
E. W. CLARK & CO.

Approved and accepted:

Pittsburgh, Pa., June 17th, 1919.

Prichitt & Company,
60 Broadway,
New York City.

Gentlemen:

Referring to the properties, operations and personnel of management of the Transcontinental Oil Company, I take pleasure in furnishing you the following information:

ORGANIZATION AND CAPITALIZATION:

Transcontinental Oil Company is being organized under the laws of Delaware with an authorized capital consisting of two million (2,000,000) shares of common stock without nominal or par value, all of which are subject to issuance for such consideration as may be fixed from time to time by the Board of Directors. It will have no preferred stock or mortgage, or funded indebtedness, and it is intended to issue forth with the entire two million (2,000,000) shares of its common capital stock.

Upon the consummation of certain legal proceedings, the Transcontinental Oil Company will acquire and own all the properties and business of the following companies and their several subsidiary companies:

Tex-Penn Oil Company and Pittsburgh-Texas Oil and Gas Company, West Virginia corporations, through which will be acquired most of the developed and undeveloped oil and gas leases hereinafter described. The properties of these companies were acquired by the Benedum-Trees interests and associates, a group which has long been known as successful locaters and developers of oil properties. All the leaseholds are located either in proven territory or in territory which is considered by the experts of the different oil interests as having great possibilities.

Riverside Eastern Oil Company, a Delaware corporation, and the Riverside Western Oil Company, a West Virginia corporation. These two companies were organized and are managed by Messrs. O. D. and E. D. Robinson, who were pioneers in developing the process of extracting gasoline from natural gas. These companies have established one of the ablest refining and distributing organizations for gasoline and oil by-products throughout the United States.

The officers and management through whom the properties mentioned were acquired and developed will retain a substantial interest in the new company and continue to be identified with its active management.

PROPERTY

A more detailed enumeration of the properties and facilities of the new company is as follows:

One Hundred Seventy-four Thousand Five Hundred (174,500) Acres of Oil and Gas Leases in the various oil fields in Texas, comprised as follows:

Thirty-four Hundred and Seventy-nine (3479) acres in practically a solid block in the northern part of Comanche County, known as the "Duke-Knoles Pool." This is one of the most prolific pools of high grade oil ever discovered,

being entirely surrounded by wells producing from one hundred to eight thousand barrels per day. The company's holdings are located in what is generally deemed to be the best section of this proven oil territory.

Two producing wells have been completed, one of which, the "Knoles Well," came in with an initial production of more than 11,000 barrels per day. Five additional wells are now drilling in the oil sand, and there is every reason to believe that these likewise will be large producers. Four other wells are nearing completion and rigs are being erected for eleven additional wells.

Two gas wells, with an estimated daily capacity of about Seventy Million (70,000,000) cubic feet of gas rich in gasoline content, have also been completed and, since the gas was found fifty feet higher in the sand than oil was found in the Knoles well, we have every reason to believe that oil will be found in large quantities with deeepr drilling.

Twenty thousand (20,000) acres on the Bravo Dome in Oldham County, Texas. Geologists of international reputation, whose work has been checked by the geologists of practically all the larger producing companies in the mid-continent field, have expressed the opinion that this will develop into one of the largest oil pools in the entire Texas field.

The acreage controlled by this company is surrounded by leaseholds which other companies have recently acquired and for which they have paid large bonuses. It is proposed to drill a number of wells on this structure during the coming summer.

Two Thousand (2,000) acres in Callahan County, Texas, and two thousand (2,000) acres in Brown County, Texas, in the vicinity of Brownwood, in which the company owns an undivided one-half interest. As the property is located in the vicinity of proven oil territory, wells are being started on each of these holdings.

*Respondent's Exhibit K.*

Thirty-five thousand (35,000) acres in one solid block in the northeastern part of Edwards County, Texas, in the center of which a well is being drilled, and one hundred and twelve thousand (112,000) acres in Kimble, Brown, Uvalde, Real, Kerr, Sutton, Edwards, Crockett and Valverde Counties, Texas. This entire acreage is adjacent or contiguous to territory now under lease to some of the largest producing companies and ten (10) test wells are being put down on properties adjacent to those owned by the Company.

All of the foregoing acreage has been most favorably reported upon and was in fact selected by a number of well known geologists, among them W. E. Wrather, Esq., who located the "Duke-Knoles Pool." Mr. Wrather before becoming identified with the Tex-Penn Company, located a large part of the most valuable producing acreage of one of the principal oil companies in the Texas field.

In addition to the foregoing properties and territory now actually held as above, there are two large tracts of land in South America which have been acquired for this enterprise. On one of these tracts, comprising about 60,000 acres, there is one of the largest seepages of high grade oil that has ever been discovered, and we expect to acquire a large additional acreage in this immediate vicinity. The other property, located on the Magdalena River in Columbia, is a tract of approximately 750,000 acres in the vicinity of the well known concessions of the Tropical Oil Company, on the property of which latter Company, three wells have been drilled, all proving large producers of high grade oil.

From the location of these lands and the reports of our geologists, it is believed that the value of these South American interests alone will be equal to, if not many times greater than, the entire value of the properties of the proposed new company in the United States.

QUALITY OF OIL

The oil now being produced is of paraffine base, and the best quality in the mid-continent field, being practically equal to the high grade Pennsylvania oils.

REFINERIES

The Company will own a refinery, now in successful operation, with a daily capacity of 3,000 barrels, and plans have been prepared for the immediate construction of an additional refinery with a capacity of 10,000 barrels per day. In this connection, it is well to mention that the company will acquire the rights of the Pittsburgh-Texas Oil and Gas Company to operate its refineries under the Brownlee process, which results in a considerable increase in the yield of refined products as compared with the ordinary refining methods.

GASOLINE PLANTS

The Company will acquire seventeen (17) gasoline plants now in actual operation and it is proposed to erect several additional plants to handle the casing-head gas produced from the wells in the Duke-Knoles tract, now showing approximately 40,000,000 cubic feet of casing-head gas per day in addition to the 70,000,000 cubic feet per day from the two wells mentioned above.

The refining facilities of the new company will afford an opportunity of blending the gasoline produced from its natural gas and make it independent of other companies for the means of reducing the volatility of the gasoline recovered with the waste which is consequent upon the inability under ordinary circumstances to properly make such blend.

*Respondent's Exhibit K.*

TRANSPORTATION FACILITIES

Approximately 300 miles of pipe line for the transportation of oil and gas and gasoline will be owned. Among the properties to be taken over at the time of its organization, the company will also acquire through ownership or under lease about 400 tank cars of from 8,000 to 10,000 gallons capacity each.

STORAGE FACILITIES

Six large steel storage tanks of 55,000 barrels each are under construction and orders have been placed for additional storage aggregating 1,500,000 barrels.

TRADE-MARK

Through the Riverside Companies above described, the company acquires the Marathon copy-righted trade-mark, under which brand gasoline, motor oils and similar products have been marketed by these companies for a number of years past. Through advertisement and the success of its products, great value attaches to this trademark, which has become firmly established in the motor world.

MARKETING FACILITIES

The company takes over from the Riverside Companies a thoroughly developed business organization for the handling and marketing of gasoline, motor oils and similar products, with twenty-five (25) established wholesale and retail marketing stations in seven different states, including sales and distribution stations in New York, Pittsburgh and Chicago, which it is proposed immediately to develop and extend.

WORKING CAPITAL

Approximately nine million ($9,000,000.00) Dollars will be placed in the Treasury of the company for the erection

of the new refinery and gasoline plants and to provide ample working capital, and the remainder of the funds being raised thru the sale of stock, will be used to aid in the acquirement of the above described properties.

EARNINGS

With adequate transportation facilities from the Duke-Knoles Pool, the present earnings would be in excess of $25,000.00 per day, and upon the completion of the pipe lines and shipping facilities now under construction it is confidently expected to have earnings far in excess of this amount within the next few weeks.

With its present and potential production from proven territory alone and upon completion of proposed refineries and gasoline plants, the company's earnings should run conservatively from $30,000,000. to $40,000,000. per annum.

Upon the development of the company's holdings in the United States and the large properties in South America which are now under contract, together with those being acquired, it is reasonable to expect that the earnings will be more than double the amount stated.

ORGANIZATION AND MANAGEMENT

Mr. M. L. Benedum will become Chairman of the Board and continue as active as heretofore in the affairs of the Company, and in addition the same group of experienced men under whose direction the company's properties were acquired and its present stage of development reached, will continue in the management and operation of the new company.

BALANCE SHEET

Herewith I am transmitting to you a balance sheet as of April 30th, 1919, showing the Company's properties and

giving effect as of that date to the introduction of the new capital to be acquired as the result of the present organization.

Very truly yours,

F. B. PARRIOTT.

The President stated to the meeting that the negotiations conducted with the Bankers on behalf of the Company, pending its organization, had as their object the securing of $20,000,000 cash for the Company through the sale of 750,000 shares of its Capital Stock and that the proposition in the form submitted by the Bankers will, when they have exercised the option contained in their offer, net to the Company, $20,225,000 for 750,000 shares of its stock.

After consideration of the papers presented to the meeting, upon motion, duly seconded, it was unanimously

RESOLVED that the Transcontinental Oil Company hereby accepts the offer made to this Company by Messrs. Prichitt and Company, Bankers of New York City and E. W. Clark & Company, Bankers of Philadelphia, contained in their letter of June 17th, 1919, submitted to this meeting and that the officers of the Company be and they are hereby authorized and directed to proceed forthwith to notify said Bankers of this Company's acceptance of said offer, and, upon the receipt by this Company of Twenty Million Two Hundred and Twenty-five thousand dollars, when and as provided in said offer, to issue to the said Bankers Seven Hundred and Fifty Thousand shares of the Capital Stock of this Company, in the manner provided in said offer and to take all such further action as may be necessary or appropriate to carry out the purpose of this resolution and the terms of said agreement.

The Secretary presented and read to the meeting, letter dated July 24th, 1919 from Mr. J. M. Holliday of Pittsburgh, Pa., to this Company.

*Respondent's Exhibit K.*

Upon motion, duly made and seconded, it was directed that the letter be spread in full upon the minutes of this meeting, which is accordingly done as follows:

Pittsburgh, Pa., July 24th, 1919.

Transcontinental Oil Company,
Benedum-Trees Building,
Pittsburgh, Pennsylvania.

Gentlemen:

Pending the incorporation and organization of the Transcontinental Oil Company and on its behalf, I have arranged to acquire and to transfer, or to cause to be transferred, to your company, the various properties for the acquisition of which your company was organized. These properties are described in the letter written to Messrs. Prichitt & Co. of N. Y. on June 17th, 1919 by Mr. F. B. Parriott.

The properties enumerated in Mr. Parriott's letter includes all of the property and assets of the Pittsburgh-Texas Oil & Gas Company, the Riverside Western Oil Company, the Riverside Eastern Oil Company and the Tex-Penn Oil Company.

All of the property of the Pittsburgh-Texas Oil & Gas Company is to be transferred to your company as a going concern as of the first day of May, 1919, on which date the company had approximately $500,000.00 cash in its treasury. It is understood that all of the company's transactions since that date have been made on behalf of your company and that the same is taken over subject to such changes in its balance sheet as have been occasioned in the regular course of business since that date. Your company is to assume all contracts and obligations of the Pittsburgh-Texas Oil & Gas Company, and I enclose herewith a draft of an undertaking to be executed by your company evidencing such assumption.

*Respondent's Exhibit K.*

The properties of the Tex-Penn Oil Company include, among other things, leases on approximately 33,000 acres of land in Sutton and Oldham Counties, Texas, which were not included in the description contained in Mr. Parriott's letter of June 17th; also all of the right, title and interest of the Tex-Penn Oil Company in a contract for options and leases, and in some instances the fee, to an extensive acreage in South America, approximating upwards of 800,000 acres, subject to royalties reserved to the owners of these lands. The beneficial interests in these South American Properties, in their entirety, is to be turned over to your Company, either directly or through subsidiaries to be organized for the purpose, subject to an interest, by way of compensation to the Agents who procured the same, which is not to exceed one-fifth (1/5th). The properties and assets of the Tex-Penn Company are to be transferred to your Company upon the principle that since July 1st, 1919, that Company's business has been conducted for the account of your Company, the Tex-Penn Oil Co. to receive credit for the oil on hand as of that date and the cash items and accounts and bills receivable as of that date and its properties to be transferred to you free of debt.

As to the two Riverside Companies, their properties are to be conveyed as of August 1st, 1919, exclusive, however, of cash on hand, bills and accounts receivable, obligations, and exclusive also of the saleable supplies on hand as of that date. The affairs of the subsidiary companies of the two Riverside Companies will be similarly adjusted and the property and assets of these subsidiary companies will be taken over by your Company either by direct transfer or a transfer of their Capital Stock.

I offer to transfer, or cause to be transferred, all of the foregoing properties to your company for Eleven Million Five Hundred Thousand ($11,500,000.00) Dollars cash and one Million Two Hundred Fifty Thousand (1,250,000) Shares of the Common capital stock of the Transcontin-

ental Oil Company, without nominal or par value, said stock to be full paid stock and not liable to any further call or assessment thereon.

Yours very truly,

J. M. HOLLIDAY.

After consideration of the foregoing letter and upon motion, duly made and seconded it was unanimously.

RESOLVED that it is to the advantage of this company to acquire the properties offered to this Company by Mr. J. M. Holliday in the letter dated July 24th, 1919 submitted to this meeting and that the said properties are a good and sufficient consideration for One Million Two Hundred Fifty Thousand (1,250,000) shares of the common capital stock of this company and the sum of Eleven Million Five Hundred Thousand ($11,500,000.00) dollars in cash.

RESOLVED FURTHER that this company accepts the said offer of Mr. J. M. Holliday and that upon the transfer to this company of said properties and assets by proper assignments, deeds and other instruments of transfer, the proper officers of this corporation be and they hereby are authorized and directed to pay the full consideration named in said offer, that is to say, they shall pay to J. M. Holliday or his nominees, Eleven Million Five Hundred Thousand ($11,500,000.00) Dollars in cash and shall issue and deliver to J. M. Holliday, or his nominees, certificates aggregating One Million Two Hundred Fifty Thousand (1,250,000) shares of the common capital stock of this company; said One Million Two Hundred Fifty Thousand shares of stock to be deemed full paid stock and not liable to any further call or assessment thereon. The ten shares (10) of stock subscribed for by the signers of the certifi-

cate of incorporation of this company, having been assigned by them to J. M. Holliday, are included in said One Million Two Hundred Fifty Thousand (1,250,000) shares, and the consideration moving to this company from J. M. Holliday, as aforesaid, therefore includes full payment for the issuance of the stock of this corporation subscribed for by its incorporators.

On motion, duly seconded, it was unanimously

RESOLVED that bank accounts be opened in the name of this company in such of the following depositories as the Treasurer of the company shall direct

E. W. Clark & Co., Philadelphia
Girard National Bank, Philadelphia
Guaranty Trust Company, New York
Central Union Trust Co., New York
Chase National Bank, New York
Metals & Mechanics National Bank, New York
First National Bank of New York
First National Bank of Pittsburgh

and that the monies to be received by the company be deposited in said depositories in such proportion and amounts as the treasurer of the company shall direct or approve, and

RESOLVED FURTHER that the funds of this company on deposit with any of the company's depositories shall be paid out only upon the check of this corporation, signed by its treasurer or assistant treasurer, and countersigned by its president or one of its vice presidents.

Upon motion, duly made and seconded, it was unanimously

RESOLVED that the Central Union Trust Co. of N. Y. be and is hereby appointed agent with the title "Transfer

Agent" for the transfer of certificates of the capital stock of this company, and

FURTHER RESOLVED that for the original issue of said stock, or any part thereof, said agent is hereby directed

(1) To record in its transfer record and countersign as Transfer Agent, certificates in such names and for not exceeding two million shares of such capital stock, when executed by the president or a vice president and the treasurer, secretary, or assistant secretary or assistant treasurer of this company, as this company may in writing direct, signed by the president or secretary under the seal of this company and

(2) To deliver said certificates to Guaranty Trust Co., Registrar, for registration and to deliver said certificates when countersigned by said registrar to, or upon the written order of, the secretary of the company; and

RESOLVED FURTHER that said transfer agent is hereby authorized to make transfers of said certificates and to countersign and deliver new certificates accordingly when the same shall have been similarly executed, and

FURTHER RESOLVED that this company lodge with said transfer agent

(1) Specimen signatures of the officers of this company and said registrar, authorized to sign said certificates, and

(2) Specimens of certificates adopted by this company, for use by it for purposes of comparison, and in such use and in relying upon certificates purporting to be such certificates and to bear signatures of such officers, this company will protect said transfer agent, until written notice to it that any or all of said officers respectively, are no longer authorized to sign; and

FURTHER RESOLVED that when said transfer agent deems expedient it may apply to Feiner & Maass, Esquires, Number 100 Broadway, City of New York, State of New York, counsel for this company, or to Jolin, Larkin & Rathbone, Number 54 Wall Street, New York City, counsel for said transfer agent for advice or instructions and for its action in reliance thereon this company shall fully protect and hold it harmless against all liability; and

RESOLVED FURTHER that the president and the secretary be, and they are hereby directed and authorized to certify these resolutions under the seal of this company and to lodge the same, together with certified copies of the charter or articles of incorporation, properly certified by the Secretary of State or Commonwealth, and of the By-laws of this company, together with certified specimens of stock certificates adopted by this company with said transfer agent.

Upon motion, duly seconded, it was unanimously

RESOLVED that the Transcontinental Oil Company, a corporation duly organized under the State of Delaware, do and it does hereby appoint the Guaranty Trust Co. of N. Y., Registrar, for the registration of certificates of this corporation's capital stock, consisting of two million shares without nominal or par value; and the Central Union Trust Co. of N. Y. as transfer agent.

FURTHER RESOLVED that for the original issue of said stock, or any part thereof, said registrar is hereby authorized and directed to record in its registration record, when presented by the transfer agent, and countersign as registrar, and deliver to Central Union Trust Co. of N. Y., transfer agent, certificates for such number of shares as the president or a vice president of this corporation may in writing direct, duly attested by the secretary or assistant secretary, under seal of this corporation;

FURTHER RESOLVED that said registrar is hereby authorized to register transfers of said certificates when presented to it for such purpose by the transfer agent, Central Union Trust Co. of N. Y., and to countersign and deliver new certificates accordingly, when the same shall have been similarly executed, and that the corporation lodge with the registrar

(1) Specimen signatures of the officers of this corporation, duly authorized to sign said certificates;

(2) Specimens of stock certificates adopted by this corporation, for use by it for the purposes of comparison and in such use and relying upon certificates purporting to be such certificates and purporting to bear such signatures of such officers, this corporation will protect such registrar;

(3) A certified copy of the charter of articles of incorporation;

(4) A certified copy of the By-laws of this corporation; and that the duly authorized officers, with their specimen signatures, are as follows:

A. B. Dally, Jr., President
J. S. Hanlon, Vice President
W. J. Wilson, Vice President
C. A. Floto, Vice President
Edward Kippax, Treasurer
S. A. McCaskey, Secretary
John O'Connor, Assistant Secretary
P. A. Kleber, Assistant Secretary

FURTHER RESOLVED, that such officer or officers as is or are duly authorized by the by-laws of the corporation, shall and hereby is, or are, directed to certify these resolutions, under the seal of this corporation, and lodge same with the

registrar, and that the proper, duly authorized officers of the corporation be and they hereby are empowered and directed to do any and all things necessary or proper to effectuate the purposes of these resolutions.

Upon motion, duly seconded, the meeting was adjourned.

S. A. McCASKEY
Secretary.

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## Respondent's Exhibit L.

Assignment of South American interest to Tex-Penn Oil Company, dated July 30, 1919, and signed M. L. Benedum, F. B. Parriott.

(Substance recited in statement of evidence; see page 743, *ante.*)

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## Respondent's Exhibit M.

COMMITTEE ON STOCK LIST,
NEW YORK STOCK EXCHANGE.

A-5053

TRANSCONTINENTAL OIL COMPANY
(Organized under the laws of Delaware)

CAPITAL STOCK WITHOUT NOMINAL OR PAR VALUE.

New York, August 6th, 1919.

Transcontinental Oil Company, hereinafter referred to as "the Company," hereby makes application for the listing on the New York Stock Exchange of temporary certificates for 2,000,000 shares Common Stock, without nominal or par value (total authorized), all of which are issued and are outstanding in the hands of the public,

with authority to substitute permanent engraved certificates on official notice of issuance in exchange for outstanding temporary certificates.

Said stock is full paid and non-assessable, and no personal liability attaches to shareholders.

The Company was organized under the laws of Delaware on the 27th day of June, 1919, with an authorized capital stock of 2,000,000 shares of common stock, without nominal or par value. The duration of its charter is perpetual.

In accordance with the terms of its charter the Company is engaged in the production, refining, sale and distribution of petroleum and its products, and the purchase, leasing and exploitation of lands or the oil, gas or mineral rights in lands, for the purpose of producing oil and gas therefrom.

Through the issuance of its capital stock the new Company acquired, among other things, all of the properties of Tex-Penn Oil Company, Pittsburgh-Texas Oil and Gas Company, the Riverside Eastern Oil Company, the Riverside Western Oil Company, and their several subsidiaries, as follows:

| *Name of Company* | *Where Incorporated* | *Date* | *Duration* | *Par* | *Capitalization* | |
|---|---|---|---|---|---|---|
| | | | | | *Authorized* | *Issued* |
| Tex-Penn Oil Company | West Virginia | Oct. 24, 1918 | Perpetual | $ 25.00 | $2,000,000 Common | $ 328,000 Common |
| Pittsburgh-Texas Oil and Gas Company | West Virginia | Feb. 13, 1919 | Perpetual | $ 5.00 | $5,000,000 Common | $2,650,000 Common |
| The Riverside Eastern Oil Company | Delaware | Oct. 29, 1915 | Perpetual | $ 5.00 | $2,000,000 Common<br>$1,000,000 7% Cum. Pre. | $1,903,285 Common<br>$ 998,200 Preferred |
| The Riverside Western Oil Company | West Virginia | Jan. 18, 1913 | Perpetual | $ 25.00 | $1,500,000 Common<br>$1,000,000 7% Cum. Preferred | $1,499,700 Common<br>$ 903,275 Preferred |
| Subsidiary companies: of *The Riverside Eastern Oil Company:* | | | | | | |
| Gasoline Supply Co. of Pittsburgh | Pennsylvania | May 1, 1911 | Perpetual | $100.00 | $ 10,000 Common | $ 10,000 Common |
| Riverside Oil Company of Illinois | Illinois | Mar. 24, 1911 | Perpetual | $100.00 | $ 20,000 Common | $ 20,000 Common |
| Gasoline Distributing Company, Inc. | New York | Apr. 10, 1914 | Perpetual | $ 25.00 | $ 300,000 Common<br>$ 200,000 Preferred | $ 123,250 Common<br>$ 23,100 Preferred |
| Gasoline Supply Co | Delaware | Jan. 3, 1914 | Perpetual | $100.00 | $ 100,000 Common<br>$ 50,000 Preferred | $ 100,000 Common<br>$ 35,800 Preferred |

and the sum of $20,000,000 in cash, part of which was used in the acquirement of properties, and the balance, as reflected in the balance sheet hereinafter set forth, constitutes working capital of the company.

The company has no mortgage or funded indebtedness.

The company owns in fee or controls by lease 996,973 acres of oil and gas lands, which are distributed as follows:

| | | |
|---|---|---|
| Texas | 185,673.62 | acres |
| Oklahoma | 300 | " |
| South America | 810,000 | " |
| Louisiana | 1,000 | " |

TEXAS

| | | |
|---|---|---|
| LEASE | | |
| Comanche County, oil and gas lease, Duke-Knoles | 3399 | acres |
| Oldham County | 20612 | " |
| Brown County | 940 | " |
| Edwards and Real Counties | 42920 | " |
| Real County | 7966 | " |
| Uvalde County | 24445 | " |
| Edwards County | 27087 | " |
| Kimble County | 7182 | " |
| Sutton County | 33409 | " |
| Crockett County | 14429 | " |
| Valverde County | 9534 | " |
| Callahan County | 970 | " |
| Eastland and Stephens Counties | 269 | " |
| Coleman County | 240 | " |
| Somervell County | 336 | " |
| FEE | | |
| Comanche County (Carrying DeLeon warehouse.) | 2 | " |

OKLAHOMA

| | | |
|---|---|---|
| FEE | | |
| Muskogee County (Carrying with it Boynton Refinery.) | 280.41 | " |

WEST VIRGINIA

| | | |
|---|---|---|
| LEASE | | |
| Brooke County | 501 | " |
| Ritchie County | 67 | " |
| Kanawah County | 79 | " |

OHIO

| | | |
|---|---|---|
| LEASE | | |
| Jefferson County | 245 | " |

*Respondent's Exhibit M.*

| | | |
|---|---|---|
| **OKLAHOMA** | | |
| FEE | | |
| Town of Delaware | 4 | " |
| Gasoline plant No. 1 | | |
| Blending station | 2 | " |
| Undivided one-half interest gasoline plant No. 4 | 10 | " |
| (Other undivided one-half interest covered by long term lease.) | | |
| LEASE | | |
| Nowata County, Gasoline plant No. 8 | 4 | " |
| Gasoline plant No. 5 | 5 | " |
| Eram Loading Station | 2 | " |
| Delaware Blending Plant | 1 | " |
| LEASE | | |
| Okmulgee County, Gasoline plant No. 3 | 1½ | " |
| Gasoline plant No. 2 | 4 | " |
| Gasoline plant No. 6 | 3 | " |
| Eram Blending station | 3 | " |
| **NEBRASKA** | | |
| FEE | | |
| Five lots Pender Blending & Distributing station | | |
| Three lots Wayne | | |
| LEASE | | |
| Storage plant at Concord | | |
| **SOUTH DAKOTA** | | |
| LEASE | | |
| Storage Lake Andees, Tyndall and Wakonda | | |
| **IOWA** | | |
| LEASE | | |
| Storage plants, Des Moines and Sioux City | | |
| **WEST VIRGINIA** | | |
| FEE | | |
| Gasoline plant sites: lots 1 to 7, block E, Island View Plan Kanawah County, including Blue Creek Blending station | | |
| Lots 6 and 7, Block A, same plan, including gasoline plant No. 3 | | |
| Undivided 1113 fee interest and leasehold Myers Farm, 57 acres of same with exclusive gas right | | |
| LEASE | | |
| 6½ acres including gasoline plant No. 16 Pinch District, Kanawah County | | |
| 2 acres and employees' dwelling house | | |
| 4 acres including gasoline plant No. 14 | | |
| 2 acres including employees' dwelling houses (all in Rowan County) | | |
| Plant No. 15, Clay County | 3 | " |
| Plant No. 12, Ritchie County | 3½ | " |
| Oil lease | 67 | " |
| Perpetual ground lease covering gasoline plants 1 and 2 | About 5 | " |
| Gasoline plant 8 | 5 | " |
| Ground lease and employees' dwelling houses (all in Brooke County) | 1 | " |

*Respondent's Exhibit M.*

OHIO

LEASE
Jefferson County, Plant No. 17..... 2 "
Dwelling house, storage plant..... 1 "

PENNSYLVANIA

FEE
Lot 100 x 120, Deldorf Street and B. & O. Railroad, carrying Northside Terminals.....
4 lots on principal thoroughfares of Pittsburgh, and 5 leaseholds in similar locations covering gasoline filling stations.....
FEE
Mars, covering storage plant and retail station.....

NEW YORK

FEE
Lot Nurge Street and Long Island Railroad, Queensboro, covering storage and distributing plant.....

All the foregoing leaseholds are on a five per cent royalty basis, which is lower than the prevailing rate of royalty in the United States. All leaseholds run for the period that oil and gas are produced in paying quantities.

In addition to the foregoing the company has 25 leasehold properties used for distribution and storage purposes throughout Texas, Oklahoma, Illinois, Pennsylvania, Nebraska, Iowa and New York. Each gasoline plant owned by the company is supplied with gas through a number of contracts calling for the delivery of entire gas production, the leases numbering upwards of 550 and covering approximately 2400 wells.

Also rights of way radiating from gasoline plants and loading stations.

LIFE OF OIL FIELDS.

From the thickness of the pay sands the character of the formation and the productivity of the wells, the probable life of the company's oil fields in Texas and Oklahoma is doubtless as long as that of Pennsylvania, which has been producing since 1865. Geological reports and tests indicate that the South American properties will be equally long lived if not greater.

*Respondent's Exhibit M.*

TEXAS

The acreage in the State of Texas is distributed approximately as follows:

3,479 acres in Comanche County
35,000 acres in Edwards County
20,000 acres in Oldham County
2,000 acres in Callahan County (half interest)
2,000 acres in Brown County (half interest)
123,194 acres in Kimble, Brown, Uvalde, Real, Kerr, Sutton, Edwards, Crockett and Valverde Counties.

3,479 acres in the North Western corner of Comanche County in the field known as the "Duke-Knoles or Desdemona Pool,"—a prolific field of high grade oil. The acreage is practically in a solid block in the heart of the field, entirely surrounded by producing wells. The discovery well in this field was located at a depth of 2,700 feet, and two other producing sands have been discovered on the outskirts of the field below the depth at which oil was found in the "Duke-Knoles" wells, as deep as 3,200 feet. Ten wells have already been drilled in the first pay sand on this property, one of which, the "Knoles well" is 65 feet in the oil sand and produced 11,700 barrels the first 24 hours, after which it was "pinched in" and the flow confined owing to lack of pipe line facilities and storage capacity to handle the oil. None of the other wells has been drilled as deep in the sand as the "Knoles well" for the same reason, but each of them in the top pay sand give indications of being large producers. Seven additional wells are drilling, and material is going to the property for the drilling of thirty more. The oil obtained from this pool is of paraffine base, 39 gravity, with 33-35% gasoline content, and high in lubricating properties, comparing favorably with the high grade Pennsylvania crude oil. The

companies whose pipe lines reach the vicinity are now paying $2.25 per barrel for this oil at the well. Two gas wells have also been drilled on this acreage with an estimated daily capacity of 70,000,000 cubic feet of gas which is very rich in gasoline content. The gas is found 50 feet higher in the sand than the oil was found in the "Knoles well," and indications point to the fact that when these gas wells are drilled deeper oil will be found in large quantities at the same level as the other producing wells. The Company has built a six inch pipe line, 12 miles in length, from its property to DeLeon, the nearest point on the St. Louis and San Francisco railroad, and at the company's loading rack oil is being shipped by tank cars to other refining interests, for which a premium is being paid for the crude oil over the prevailing market price of $2.25 per barrel, and the company is also supplying its own refinery at Boynton, Oklahoma, with shipments by rail. Plans have been prepared and material purchased for the erection of several large casing-head gasoline plants on this acreage to turn into gasoline the immense volume of casing-head gas now on the property.

Edwards Plateau: 35,000 acres in one solid block in the northeastern part of Edwards County, Texas, in the center of which a well is now being drilled.

112,000 acres in Kimble, Brown, Uvalde, Real, Kerr, Sutton, Edwards, Crockett and Valverde Counties, Texas, all of which is adjacent or contiguous to territory now under lease to some of the largest producing companies. Ten wells are being put down on properties adjacent to those owned by the company toward the expense of some of which this Company has contributed. Geologists speak very favorably of this acreage, viewing it as a continuation of the Pennsylvania formation, considering it one of the most prolific oil fields on the North American continent.

Bravo Dome, Oldham County, Texas. Over 20,000 acres on the Bravo Dome in Oldham County, Texas. The acreage

controlled by the company is surrounded by leaseholds which other large companies have recently acquired, and for which they have paid bonuses. It is proposed to drill a number of wells on this structure during the present season. Geologists of international reputation whose work has been checked by geologists of all the larger producing companies in the mid-continent field, have expressed the view that this will develop into one of the largest fields of oil in the entire Texas field. The property is located in the northwestern corner of Oldham County, Texas, the eastern edge of the Dome being exposed at about 3 miles east of the New Mexico line. Charles M. Gould, former State Geologist of Oklahoma, in a report dated March 31st, 1919, together with Joseph M. Perkins, geologist, said, referring to this property: "The structure appears to be symmetrical dome with a diameter of about 15 miles, of which a little more than half is exposed. The amount of visible lift is 425 feet. The Bravo Dome is very similar to the John Ray Dome, north of Amorillo, near the apex of which a gas well has been drilled. We consider the Bravo Dome to be one of the best structures we have ever seen, and we believe it will develop into a prolific oil and gas field."

Callahan and Brown Counties, Texas: 2,000 acres in Callahan County and 2,000 acres in Brown County, in the vicinity of Brownwood, in which the company owns an undivided half interest, the acreage being located in the vicinity of proven oil territory. Wells are being started by the company on each of these blocks.

OKLAHOMA.

300 acres in the heart of a new field seven miles northwest of Boynton, Oklahoma, on which one producing well averaging 300 barrels per day of light oil of paraffine base, 39 gravity, from the Glenn Sand is located. The well is now three months old. The sand is very prolific and the

formation very lasting in production. The oil sand runs from 50 to 75 feet in thickness, and is found at a depth of between 1,700 and 1,800 feet. Four other wells are now drilling on this property, all of which will be completed within thirty days. This oil is piped from the pool to the company's refinery at Boynton. Another well was brought in on this property August 5th, running 325 barrels of the same calibre oil.

LOUISIANA.

Bull Bayou District of Louisiana: 1,000 acres in the Bull Bayou District, which were acquired on a drilling basis, two wells having been started on the property. This acreage adjoins the celebrated Gusher Bend Pool on Red River, where wells have come in at the rate of two to five thousand barrels each.

SOUTH AMERICA

750,000 acres of leaseholds along the Magdalena River, Columbia, which has been acquired from the owners of the lands. All these lands having been owned prior to 1874, when Colombian oil and mineral lands were nationalized. This land adjoins the properties of the Tropical Oil Company on which 3 wells have been drilled. Their experience shows that at a depth of 2200 feet, 11 different producing formations have been passed through, each giving indication of a prolific production of high grade light oil of paraffine base. One of the wells on this adjoining property at the 2200 feet level is producing approximately 10,000 barrels of oil per day, and geological reports and tests made on the properties indicate the presence of similar oil in quantity at various locations. The company now has men on the property making preliminary surveys and locating and building working camps, and it is anticipated that active drilling will start within a very short time.

60,000 acres about fifty miles from Bogota, which has been acquired, 5000 acres in fee, and 55,000 acres by leasehold,—on which is located one of the largest oil springs known to the world, all of the South American properties, according to the reports of geologists, showing formations containing the highest grade light oils at varying depths.

REFINERIES

The company owns a refinery now in successful operation with a daily capacity of 3,000 barrels, located at Boynton, Oklahoma. Plans have been prepared and machinery is being ordered for the construction of an additional refinery, to be located in Texas, with a capacity of 10,000 barrels per day, which will probably be completed early in 1920.

The company has also acquired the exclusive right to operate its refineries under the "Brownlee" refining process, resulting in a considerable increase in the yield of refined products as compared with ordinary refining methods. A single unit of the plant operating under this process will handle about 2,000 barrels of oil per 24 hour day, yielding five to six per cent more gasoline and naphtha than by the usual still method, thereby increasing considerably the value of the products from a barrel of crude oil on the basis of present prices, adding twenty-five cents a barrel over ordinary methods.

STORAGE FACILITIES

Six steel storage tanks of 55,000 barrels each, are completed or are under construction, two at Boynton, Oklahoma, and four on the "Duke-Knoles" property in Texas, and orders have been placed for additional storage aggregating 1,500,000 barrels, to be distributed over the company's producing properties.

*Respondent's Exhibit M.*

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GASOLINE PLANTS

The company owns 17 gasoline plants now in actual operation, eight of which are located in Oklahoma, eight in West Virginia, and one in Ohio, which treat a total of 4,182,000 cubic feet of casinghead gas per day and produce daily 15,000 gallons of gasoline.

TRANSPORTATION FACILITIES

Approximately 300 miles of pipe line for transportation of oil, gas and gasoline are owned by the company located in the various fields of Oklahoma, Texas, West Virginia and Ohio, all of which either connect the company's producing fields with refineries and gasoline plants, or afford means of delivering oil or gasoline to loading stations at railroad points. The company owns and operates 137 tank cars of a capacity of from eight to ten thousand gallons each, and from time to time, as occasion requires, leases similar cars to the total of approximately 400.

TRADE-MARK

In taking over the Riverside Eastern Oil Company and the Riverside Western Oil Company, the company acquired the "Marathon" copyrighted trade-mark, under which brand gasoline, motor oils and similar products have been successfully marketed by these companies for a number of years past. It has been extensively advertised and is firmly established in the motor world. Behind it is a thoroughly established business organization with over 400 employees for the handling and marketing of these products, with 25 established wholesale and retail marketing stations in seven different states, including sales and distributing stations in New York, Chicago and Pittsburgh, which it is proposed forthwith to develop and extend.

The subsidiary companies taken over in connection with the Riverside Eastern Oil Company are local selling organizations, all the stock of which is held in the treasury of the Riverside company.

It is intended that all of the constituent companies and the subsidiaries (except selling companies) will be dissolved as soon as practicable.

The policy of the company is to constantly acquire and develop additional acreage and leaseholds in oil producing districts.

RIVERSIDE EASTERN OIL COMPANY
BALANCE SHEET AS OF DECEMBER 31, 1917

ASSETS

| | | | |
|---|---|---|---|
| Capital assets: | | | |
| Plants, Equipment and Developments | | $628,255.83 | |
| Rolling Stock | | 37,686.00 | |
| Real Estate and Leases | | 21,103.73 | $ 687,045.56 |
| Contracts, Patent Rights, Leases, etc. | | | 2,130,390.27 |
| Investments: | | | |
| Subsidiary Companies—Stock | | $242,910.00 | |
| U. S. Liberty Loan Bonds | | 5,150.00 | 248,060.00 |
| Current assets: | | | |
| Inventories at cost | | $ 69,980.85 | |
| Accounts and Bills Receivable | | 486,698.45 | |
| Cash | | 13,634.92 | 570,314.22 |
| | | | $3,635,810.05 |

LIABILITIES

| | | | |
|---|---|---|---|
| Capital liabilities: | | | |
| Capital Stock: | | | |
| Preferred Capital Stock (Authorized issue) | | $1,000,000.00 | |
| Common Capital Stock: | | | |
| Authorized Issue | $2,000,000.00 | | |
| Less in Treasury | 94,915.00 | 1,905,085.00 | $2,905,085.00 |
| Special Donation Stock Surplus | | | 236,115.00 |
| Current liabilities: | | | |
| Accounts and Bills Payable | | | 348,580.07 |
| Surplus: | | | |
| Surplus—January 1, 1917 | | $ 90,862.28 | |
| Net Profit—Jan. 1, 1917, to Jan. 1, 1918 | | 182,316.84 | |
| | | $273,179.12 | |
| Less: | | | |
| Preferred Stock Dividends Nos. 5-6-7-8 | $69,999.96 | | |
| Common Stock Dividends Nos. 1-2-3-4 | 57,149.18 | 127,149.14 | 146,029.98 |
| Surplus and Undivided Profits | | | $3,635,810.05 |

*Respondent's Exhibit M.*

## RIVERSIDE WESTERN OIL COMPANY
## BALANCE SHEET AS OF DECEMBER 31, 1917

### ASSETS

| | | |
|---|---|---|
| Capital assets: | | |
| Plant Equipment and Development | $ 854,105.74 | |
| Rolling Stock | 93,298.43 | |
| Contracts, Patents, etc | 1,510,156.50 | |
| Distributing Stations | 30,000.00 | $2,487,560.67 |
| Investments: | | |
| U. S. Liberty Loan | | 7,500.00 |
| Current assets: | | |
| Inventories at cost or less | $ 77,869.42 | |
| Accounts and Bills Receivable | 412,026.54 | |
| Cash in Bank | 19,772.99 | 509,668.95 |
| | | $3,004,729.62 |

### LIABILITIES

| | | |
|---|---|---|
| Capital liabilities: | | |
| Preferred Capital Stock (Authorized issue $1,000,000) | $ 903,275.00 | |
| Common Capital Stock (Authorized issue) | 1,500,000.00 | $2,403,275.00 |
| Current liabilities: | | |
| Accounts and Bills Payable | | 435,415.72 |
| Surplus, January 1, 1917 | $119,474.85 | |
| Profit—Jan. 1, 1917 to Dec. 31, 1917 | $236,519.43 | |
| Less Reserve for Deferred and depreciation charges | 44,396.83 | |
| Net Profit for Year | 192,122.60 | |
| | $311,597.45 | |
| Less: Dividends Paid January 1, 1917 to December 31, 1917 | 145,558.55 | |
| Surplus and Undivided Profits | | 166,038.90 |
| | | $3,004,729.62 |

## RIVERSIDE EASTERN OIL COMPANY, RIVERSIDE WESTERN OIL COMPANY AND SUBSIDIARIES COMBINED INCOME ACCOUNT FOR THE YEAR ENDED DECEMBER 31, 1918

| | |
|---|---|
| Sales | $9,090,221.00 |
| Purchases | 8,151,778.96 |
| Gross Earnings | $ 938,442.04 |
| Expenses | 687,866.62 |
| Net Earnings | $ 250,575.42 |

*Respondent's Exhibit M.*

## RIVERSIDE EASTERN OIL COMPANY
## BALANCE SHEET AS OF DECEMBER 31, 1918

### ASSETS

| | | | |
|---|---|---|---|
| Capital assets: | | | |
| Plant, Equipment and Development | | $ 657,736.73 | |
| Real Estate and Leases | | 59,873.36 | |
| Rolling Stock | | 37,686.00 | |
| Contracts, Patents, Rights, Leases, etc | | 2,130,390.27 | $2,885,686.36 |
| Subsidiary Companies Stock | | $232,910.00 | |
| Investments: | | | |
| U. S. Liberty Loans | | 26,600.00 | 259,510.00 |
| Current assets: | | | |
| Inventories at cost or less | | $110,217.47 | |
| Accounts and Bills Receivable | | 449,374.14 | |
| Cash in Banks | | 31,329.95 | 590,921.56 |
| Deferred Charges | | | 7,979.32 |
| Sinking Fund for Retirement of Debenture notes | | | 12,777.76 |
| | | | $3,756,875.00 |

### LIABILITIES

| | | | |
|---|---|---|---|
| Capital liabilities: | | | |
| Preferred Capital Stock authorized | $1,000,000.00 | | |
| Less Treas. Stock | 1,800.00 | | |
| Total Outstanding Pref. Stock | | $ 998,200.00 | |
| Common Capital Stock authorized | $2,000,000.00 | | |
| Less Treas. Stock | 96,715.00 | | |
| Total Outstanding Common Stock | | 1,903,285.00 | |
| Total Outstanding Stock | | | $2,901,485.00 |
| Current liabilities: | | | |
| Accounts and Bills Payable | | $371,950.36 | |
| Debenture Notes | | 74,500.00 | |
| Special Donation Stock Surplus | | 237,915.00 | 684,365.36 |
| Surplus—Jan. 1, 1918 | | $146,029.98 | |
| Profit—Jan. 1, 1918 to Dec. 31, 1918 | $152,469.24 | | |
| Less Reserve for Depreciation, 1918 | 28,900.00 | | |
| Net Profit | | 123,569.24 | |
| Total | | $269,599.22 | |
| Less Dividends paid 1918 | | 98,574.58 | |
| Surplus and Undivided Profits | | | 171,024.64 |
| | | | $3,756,875.00 |

*Respondent's Exhibit M.*

RIVERSIDE WESTERN OIL COMPANY
BALANCE SHEET AS OF DECEMBER 31, 1918

ASSETS

| | | |
|---|---|---|
| Capital assets: | | |
| Plant Equipmant and Development | $ 869,952.53 | |
| Rolling Stock | 93,298.43 | |
| Contracts, Patents, etc | 1,510,156.50 | |
| Distributing Stations | 33,512.50 | $2,506,919.96 |
| Investments: | | |
| U. S. Liberty Loans | | 33,800.00 |
| Current assets: | | |
| Inventories at cost or less | $ 63,401.56 | |
| Accounts and Bills Receivable | 352,486.42 | |
| Cash in Banks | 89,620.93 | 505,508.91 |
| Deferred Charges | $ 3,500.40 | |
| Sinking Fund for Retirement of Deb. Notes | 24,583.35 | 28,083.75 |
| | | $3,074,312.62 |

LIABILITIES

| | | |
|---|---|---|
| Capital liabilities: | | |
| Preferred Capital Stock authorized and issued | $ 902,975.00 | |
| Common Capital Stock authorized and issued | 1,500,000.00 | $2,402,975.00 |
| Current liabilities: | | |
| Accounts and Bills Payable | $453,922.01 | |
| Debenture Notes | 32,600.00 | 486,522.01 |
| Surplus—January 1, 1918 | $166,038.90 | |
| Profit—Jan. 1, 1918 to Dec. 31, 1918 | $165,756.18 | |
| Less Reserve for Depreciation for 1918 | 38,750.00 | |
| Net Profit for year | 127,006.18 | |
| Total | $293,045.08 | |
| Less: Dividends paid January 1, 1918 to December 31, 1918 | 108,229.47 | |
| Surplus and Undivided Profits | | 184,815.61 |
| | | $3,074,312.62 |

*Respondent's Exhibit M.*

## RIVERSIDE WESTERN OIL COMPANY INCOME ACCOUNT FOR THE SIX MONTHS ENDED JUNE 30, 1919

| | |
|---|---|
| Sales | $869,119.95 |
| Purchases | 535,722.85 |
| Gross Earnings | $333,397.10 |
| Expenses | 255,171.66 |
| Net Earnings | $ 78,225.44 |

Note: The earnings of this company for the above period were seriously affected by a fire at its No. 1 plant at Nowata, Oklahoma, which materially curtailed production.

## BALANCE SHEET AS OF JUNE 30, 1919

### Assets

| | | |
|---|---|---|
| Capital assets: | | |
| Plant, Equipment and Development | $1,079,519.78 | |
| Rolling Stock | 93,298.43 | |
| Contracts, Patents, etc. | 1,510,156.50 | $2,682,974.71 |
| Investments: | | |
| U. S. Liberty Loans | | 36,900.00 |
| Current assets: | | |
| Inventories at cost or less | $132,038.38 | |
| Accounts and Notes Receivable | 734,409.91 | |
| Cash in Banks | 38,712.87 | 905,161.16 |
| Deferred Charges | | 6,062.78 |
| Sinking Fund for Retirement of Debenture Notes | | 19,899.01 |
| Total | | $3,650,997.66 |

### Liabilities

| | | |
|---|---|---|
| Capital liabilities: | | |
| Preferred Capital Stock authorized and issued | $ 903,275.00 | |
| Common Capital Stock authorized and issued | 1,499,850.00 | $2,403,125.00 |
| Current liabilities: | | |
| Accounts and Notes Payable | $978,941.19 | |
| Debenture Notes | 37,500.00 | 1,016,441.19 |
| Surplus, Jan. 1, 1919 | $184,815.61 | |
| Profits, Jan. 1, 1919 to June 30, 1919 | 78,225.44 | |
| | $263,041.05 | |
| Less dividends paid 1919 | 31,609.58 | |
| Surplus and undivided profits | | 231,431.47 |
| Total | | $3,650,997.66 |

*Respondent's Exhibit M.*

## RIVERSIDE EASTERN OIL COMPANY AND SUBSIDIARY COMPANIES INCOME ACCOUNT FOR THE SIX MONTHS ENDED JUNE 30, 1919

| | | |
|---|---|---|
| Sales | | $1,190,448.66 |
| Purchases | | 989,987.73 |
| Gross Earnings | | $ 200,460.93 |
| Expenses | | 153,732.16 |
| Net earnings | | $ 46,728.77 |

## RIVERSIDE EASTERN OIL COMPANY AND SUBSIDIARY COMPANIES COMBINED BALANCE SHEET AS OF JUNE 30, 1919

### ASSETS

| | | |
|---|---|---|
| Capital assets: | | |
| Plant, Equipment and Development | $ 933,694.17 | |
| Real Estate and Leases | 55,391.76 | |
| Rolling Stock | 37,686.00 | |
| Contracts, Patents, Rights, etc. | 2,150,876.22 | $3,177,648.15 |
| Investments: | | |
| Investment account | $ 28,310.00 | |
| U. S. Liberty Loans | 29,200.00 | |
| Current assets: | | |
| Inventories at cost or less | 131,164.75 | |
| Current liabilities: | | |
| Accounts and Bills Receivable | 897,153.27 | |
| Cash in Banks | 25,340.53 | 1,111,168.55 |
| Deferred Charges | | 14,449.07 |
| Sinking Fund for Retirement of Debenture notes | | 12,918.17 |
| | | $4,316,183.94 |

### LIABILITIES

| | | |
|---|---|---|
| Capital liabilities: | | |
| Preferred Capital Stock authorized | $ 997,550.00 | |
| Common Capital Stock issued | 1,903,050.00 | $2,900,600.00 |
| Current liabilities: | | |
| Accounts and Notes Payable | $1,052,697.43 | |
| Debenture Notes | 83,100.00 | |
| Special Donation Stock Surplus | 96,950.00 | 1,232,747.43 |
| Surplus, Jan. 1, 1919 | $171,024.64 | |
| Profit Jan. 1, 1919 to June 30, 1919 | 46,728.77 | |
| | $217,753.41 | |
| Less dividends paid, 1919 | 34,916.90 | |
| Surplus and undivided profits | | 182,836.51 |
| | | $4,316,183.94 |

*Respondent's Exhibit M.*

## PITTSBURGH-TEXAS OIL AND GAS COMPANY
## BALANCE SHEET AS OF JUNE 30, 1919

### ASSETS

| | | |
|---|---|---|
| Capital assets: | | |
| Leaseholds | $5,000,000.00 | |
| Refining Plant | 746,583.09 | |
| Investment account | 219,156.49 | $5,965,739.58 |
| Current assets: | | |
| Cash and advances | $ 165,532.56 | |
| Accounts Receivable | 777,115.00 | |
| Trustees Stock Account | 2,350,000.00 | |
| Expenses (development) | 47,223.95 | 3,339,871.51 |
| Total | | $9,305,611.09 |

### LIABILITIES

| | |
|---|---|
| Capital liabilities: | |
| Capital Stock authorized and issued | $5,000,000.00 |
| Working Capital | 300,000.00 |
| Reserves: | |
| Reserve for Trustees Stock account | 3,500,000.00 |
| Reserve for Purchase of Refinery | 455,583.09 |
| Contingent liabilities: | 50,000.00 |
| Accounts Payable | 28.00 |
| Earned Interest | |
| Total | $9,305,611.09 |

## TEX-PENN OIL COMPANY AND ASSOCIATED INTERESTS IN ITS OIL PROPERTIES CONSOLIDATED PROFIT AND LOSS STATEMENT FOR THE SIX MONTHS ENDED JUNE 30, 1919

| | | | |
|---|---|---|---|
| Oil Sales: | | | |
| Duke | $ 27,987.45 | | |
| Knoles | 185,256.22 | $213,243.67 | |
| Outstanding Interests | | 533,109.15 | |
| | | $746,352.82 | |
| Field Operating Expenses | | 13,839.71 | $732,513.11 |
| Gas Sales: | | | |
| Sales | $13,115.48 | | |
| Outstanding Interests | 21,859.15 | $34,974.63 | |
| Field Operating Expense | | 2,752.93 | 32,221.70 |
| Tank Car Sales: | | | |
| Sales of Crude Oil | $8,105.45 | | |
| Cost of Sales | 7,443.75 | $661.70 | |
| Operating Expenses | | 225.00 | 436.70 |

*Respondent's Exhibit M.*

| | | |
|---|---|---|
| Gross Profit | | $765,171.51 |
| General Operating Expenses | | 7,247.72 |
| Operating Profit | | $757,923.79 |
| Administration and General Expense | | 26,485.76 |
| | | $731,438.03 |
| Other Income: | | |
| Discount on Purchases | $640.97 | |
| Water Station | 844.29 | 1,485.26 |
| | | $732,923.29 |
| Depreciation | | 122,000.00 |
| Surplus for 6 months | | $610,923.29 |
| Less—Organization Expense | $21,600.00 | |
| Non-Production Expense | 32,365.97 | 53,965.97 |
| Surplus | | $556,957.32 |

The foregoing represents the earnings of the entire properties, in which the above company owned only an interest. Transcontinental Oil Co. has acquired the outstanding interests and now owns the *entire* property, for which reason earnings are shown as above.

TEX-PENN OIL COMPANY AND ASSOCIATE INTERESTS IN ITS OIL PROPERTIES CONSOLIDATED BALANCE SHEET AS OF JUNE 30, 1919

ASSETS

| | | |
|---|---|---|
| Capital assets: | | |
| Property | $385,355.49 | |
| Leaseholds | 102,610.17 | $ 487,965.66 |
| Current assets: | | |
| Cash in Bank | $245,013.61 | |
| De Leon Cash | 7,591.73 | |
| Advance Accounts | 16,556.79 | |
| Bills Receivable | 11,529.72 | |
| Accounts Receivable | 349,766.59 | |
| Payments in Advance | 40.00 | |
| | $630,498.44 | |
| U. S. Liberty Bonds | 1,000.00 | |
| Inventory Pipe Line Department at cost or less | 73,341.29 | 704,839.73 |
| Warehouses: | | |
| De Leon | $102,732.22 | |
| Duke | 47,533.31 | 150,265.53 |
| Deferred Charges to Operators: | | |
| Lease Bonus | $32,036.95 | |
| Stacker Heirs Taxes | 235.73 | |
| Development Accounts | 11,394.90 | |

| | | |
|---|---|---|
| Insurance Unexpired | $43,667.58 | |
| | 69.90 | |
| Rentals Paid in Advance | 2,855.30 | |
| Taxes Paid in Advance | 500.00 | 47,092.78 |
| | | $1,390,163.70 |

LIABILITIES

| | | |
|---|---|---|
| Capital Liabilities: | | |
| Capital Stock authorized and issued | | $ 316,000.00 |
| Current Liabilities: | | |
| Notes Payable | $224,478.43 | |
| Accounts Payable | 59,473.68 | |
| Pay Roll | 10,490.73 | 294,442.84 |
| Reserve Accounts: | | |
| Accrued Oil Royalty | $ 60,844.74 | |
| Accrued Gas Royalty | 21,859.12 | |
| Reserve for Depreciation | 118,459.68 | |
| Reserve for Deferred Charges | 21,600.00 | 222,763.54 |
| Surplus: | | |
| Profit to June 30, 1919 (six months) | | 556,957.32 |
| | | $1,390,163.70 |

TENTATIVE BALANCE SHEET OF
TRANSCONTINENTAL OIL COMPANY (AS AT AUGUST 1, 1919)

ASSETS

| | | |
|---|---|---|
| Current Assets: | | |
| Crude and refined oil at market | | $ 73,341.29 |
| Materials and supplies at cost | | 150,265.53 |
| Accounts Receivable | $ 11,529.72 | |
| Notes Receivable | 378,772.39 | 390,302.11 |
| Prepaid accounts | | 3,425.20 |
| Cash | | 9,085,728.89 |
| Capital Assets: | | |
| Acreage, leaseholds (United States and South America), Refinery, Gasoline Plants, Real Estate, Pipe Lines, Tank Cars, Distributing Stations, Houses for employees, etc., against which together with the foregoing enumerated assets, there have been issued 2,000,000 shares of Capital Stock without nominal or par value, appraised at | | 187,290,000.00 |
| | | $196,993,064.02 |

LIABILITIES

| | |
|---|---|
| Capital Stock: | |
| 2,000,000 shares without nominal or par value | $ 1.00 |
| Capital Surplus, as shown by appraised valuation of properties | 196,615,916.32 |

*Respondent's Exhibit M.*

| | | |
|---|---|---|
| Current Liabilities: | | |
| Accounts payable | $ 69,964.41 | |
| Notes Payable | 224,478.43 | 294,442.84 |
| Accrued accounts | | 82,703.86 |
| | | $196,993,064.02 |

The Corporation agrees with the New York Stock Exchange as follows:

Not to dispose of its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of stock interests in other companies unless for retirement and cancellation, except under existing authority or on direct authorization of stockholders of the company holding the said companies.

Beginning with 1920 to publish quarterly statements of earnings.

To publish at least once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the corporation, a statement of its physical and financial condition, an income account covering the previous fiscal year, and a balance sheet showing assets and liabilities at the end of the year; also annually an income account and balance sheet of all constituent, subsidiary, owned or controlled companies; or a consolidated income account and a consolidated balance sheet.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

Not to make any change in listed securities, of a transfer agency or of a registrar of its stock, or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the company.

To notify the Stock exchange in the event of the issuance of any rights or subscriptions to or allotments of its securities and afford the holders of listed securities a proper period within which to record their interests after authorization, and that all rights, subscriptions or allotments shall be transferable payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

The fiscal year of the Corporation ends December 31st.

The principal office of the Corporation is in the City of Wilmington, Delaware.

The annual meeting of the Corporation is held at its office in Pittsburgh, Pa., on the first Tuesday of March of each year.

The Directors, elected annually, are: A. B. Dally, Jr., George J. Wolf, S. A. McCaskey, Ed. Kippax, T. R. Cowell, M. L. Benedum, O. D. Robinson, F. B. Parriott (all of Pittsburgh, Pa.), William Lilley, George W. Kendrick, 3rd (of Philadelphia, Pa.) and Hugh K. Prichitt, (of New York, N. Y.).

The officers are: A. B. Dally, Jr., President; George J. Wolf, W. J. Wilson (Pittsburgh), D. A. Floto (Pitts-

burgh), J. F. Hanlon (Pittsburgh), William Lilley (Philadelphia) Vice-presidents; T. R. Cowell, Secretary; S. A. McCaskey, John O'Connor (Pittsburgh), W. Evans Smith (Philadelphia) Assistant-Secretaries; Ed. Kippax, Treasurer; J. P. Steel (Pittsburgh), and P. A. Kleber (Pittsburgh) Assistant-Treasurers.

The transfer agent is: Central Union Trust Company of New York.

The Registrar is: Guaranty Trust Company of New York.

TRANSCONTINENTAL OIL COMPANY,
By T. R. COWELL,
Secretary.

This Committee recommends that the above described temporary certificates for 2,000,000 shares common stock, without nominal or par value, be admitted to the list, with authority to substitute permanent engraved certificates in lieu thereof on official notice of issuance in exchange therefor, in accordance with the terms of this application.

WM. W. HEATON,
Chairman.

*Adopted by the Governing Committee, August 13, 1919.*

HARRISON S. MARTIN,
Assistant Secretary.

CHESTER I. GREEN,
Secy.

**Respondent's Exhibit N.**

TRANSCONTINENTAL OIL COMPANY

New York, August 7th, 1919.

Central Union Trust Company,
Transfer Agent

Guaranty Trust Company,
Registrar.

Gentlemen:

Kindly note that the following certificates of stock of the TRANSCONTINENTAL OIL COMPANY, issued in the name of Prichitt & Co., are not to be further registered or transferred except upon notice from and consent of the New York Stock Exchange:

| | | | | | |
|---|---|---|---|---|---|
| *100 shares each:* | Certificate # | 4001 | to | 5000 | 100,000 |
| | " | 5001 | | 5250 | 25,000 |
| | " | 2663 | | | 100 |
| | " | 2878 | | 3000 | 12,300 |
| | " | 3740 | | 4000 | 26,100 |
| | " | 3701 | | | 100 |
| | " | 3001 | | 3700 | 70,000 |
| *10 shares each:* | Certificate # | 11 | to | 100 | 900 |
| | " | 401 | | 500 | 1,000 |
| | " | 101 | | 200 | 1,000 |
| | " | 201 | | 300 | 1,000 |
| | " | 301 | | 400 | 1,000 |
| *25 shares each:* | Certificate # | 806 | to | 900 | 2,375 |
| | " | 608 | | 700 | 2,325 |
| | " | 501 | | 600 | 2,500 |
| *50 shares each:* | Certificate # | 915 | to | 1000 | 4,300 |
| | | | | | 250,000 |

Very truly yours,

TRANSCONTINENTAL OIL COMPANY
T. R. COWELL
Secretary

**Respondent's Exhibit O.**

TRANSCONTINENTAL OIL COMPANY.
GENERAL OFFICES:
BENEDUM-TREES BUILDING.
Pittsburgh, Pa.

November 21, 1919.

Herbert H. Maass, Esq.
c/o Feiner & Maass,
100 Broadway, New York City.

Dear Mr. Maass:

As per your request in letter of November 17th, I enclose letter for the New York stock exchange.

With kindest personal regards, I am,

Yours very truly,

T. R. COWELL.

TRC:CD

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November 18, 1919.

Committee on Stock List,
New York Stock Exchange,
New York City, N. Y.

Gentlemen:

Referring to a communication signed by this Company, dated August 7th, 1919, directed to the Central Union Trust Company, Transfer Agent of the stock of this company, and Guaranty Trust Company, Registrar of the stock thereof, in which it was stated that certificates Nos. 4001 to 5000, 5001 to 5250, 2663, 2878 to 3000, 3740 to 4000, 3701, 3001 to 3700, 11 to 100, 401 to 500, 101 to 200, 201 to 300, 301 to 400, 806 to 900, 608 to 700, 501 to 600 and 915 to 1000, issued in the name of Prichitt & Company, were not to be further registered or transferred except

upon notice from and consent of the New York Stock Exchange, we are informed that Messrs. Prichitt & Company have applied to your Committee to consent to the further registration and transfer of these shares.

This company hereby approves the said application so far as it is concerned, and joins in the request made by Messrs. Prichitt & Company to your Committee that you consent that such certificates be subject to further registration and transfer and a good delivery, as the same are now in all respects free for the market.

Very truly yours,

TRANSCONTINENTAL OIL COMPANY
T. R. COWELL
Secretary.

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**Respondent's Exhibit P.**

NEW YORK STOCK EXCHANGE

Secretary's Office. New York December 5, 1919

The Guaranty Trust Company,
Registrar, Transcontinental Oil Company,
New York City

Gentlemen:

Referring to the letter directed to you by the Transcontinental Oil Company under date of August 7, 1919, restricting further transfer and registration of 250,000 shares of its Capital Stock, and referring by number to the specific certificates representing same, I am instucted by the Committee on Stock List to advise you that author-

ity is hereby given for the transfer and registration of said stock without restriction so far as this Exchange is concerned.

Yours truly,

(Signature illegible)
Secretary

SL

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**Respondent's Exhibit Q.**

Minutes of meeting of Tex-Penn stockholders on March 17, 1920, authorizing dissolution of the company.

(Substance recited in statement of evidence; see page 744, *ante.*)

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**Respondent's Exhibit R.**

Certificate of Dissolution of Tex-Penn Oil Company, dated June 20, 1920, and signed by the Secretary of State of West Virginia.

(Substance recited in statement of evidence; see page 745, *ante.*)

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**Respondent's Exhibit S.**

Tentative income tax return for the calendar year 1919 filed by Tex-Penn Oil Company on March 15, 1920, with Collector of Internal Revenue for 23rd District of Pennsylvania.

(Not printed; original and photostatic copies produced for inspection of Court. See folder of unprinted exhibits.)

## Respondent's Exhibit T.

Final income tax return of Tex-Penn Oil Company for the calendar year 1919 filed June 5, 1920, with the Collector of Internal Revenue for the 23rd District of Pennsylvania.

(Not printed; portions recited in statement of evidence; see pages 745 to 750, *ante;* original and photostatic copies produced for inspection of Court. See folder of unprinted exhibits.)

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## Respondent's Exhibit U.

Original income tax return for the calendar year 1919 filed by M. L. Benedum, March 15, 1920, with the Collector of Internal Revenue for the 23rd District of Pennsylvania.

(Not printed; portion recited in statement of evidence; see page 750, *ante;* original and photostatic copies produced for inspection of Court. See folder of unprinted exhibits.)

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## Respondent's Exhibit V.

Amended income tax return for the calendar year 1919 filed by M. L. Benedum, December 14, 1920, with the Collector of Internal Revenue for the 23rd District of Pennsylvania.

(Not printed; original and photostatic copies produced for inspection of Court. See folder of unprinted exhibits.)

## Respondent's Exhibit W.

Original income tax return for the calendar year 1919 filed by F. B. Parriott, March 15, 1920, with the Collector of Internal Revenue for the 23rd Pennsylvania District.

(Not printed; portion recited in statement of evidence; see page 751, *ante;* original and photostatic copies produced for inspection of Court. See folder of unprinted exhibits.)

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## Respondent's Exhibit X.

Amended income tax return for the calendar year 1919 filed by F. B. Parriott, December 14, 1920, with the Collector Internal Revenue for the 23rd District of Pennsylvania.

(Not printed; original and photostatic copies produced for inspection of Court. See folder of unprinted exhibits.)

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## Respondent's Exhibit Y.

Report of examining agents D. W. Cahan and D. P. McConologue, dated June 20, 1927, covering examination made in connection with the return of M. L. Benedum for the year 1919. (See folder of unprinted exhibits.)

The following are portions of the report and attached schedules:

The examining officer has noted the information contained in Revenue Agent L. W. Gillette's supplemental report dated June 30, 1926 in which a value of $3.085 per share was assigned to the stock of the Transcontinental stock received in liquidation of the Tex-Penn Oil Co., whereas the Department recommended a value of $47.55

per share based on the average market price prevailing on the stock market within a reasonable period of time after the date of Sale, June 24, 1919.

It might be mentioned in this connection that neither M. L. Benedum or F. B. Parriott nor Mrs. M. L. Benedum sold any of the 1,007,834 shares of Transcontinental Co. stock or any large block during the year 1919 and 1920, during which time Transcontinental Oil Stock was selling at its peak. The examining officer is informed by Mr. Adams, attorney, representing the taxpayer, that some agreement existed between M. L. Benedum, F. B. Parriott and the Eastern Bankers to withhold their stock from the market. It is the contention of the attorney that had M. L. Benedum or F. B. Parriott or Mrs. M. L. Benedum unloaded their stockholdings, the bottom of the market in Transcontinental Oil Stock would have fallen out and the high values would never be sustained.

PRELIMINARY STATEMENT

| *Year* | *Additional Tax* |
|---|---|
| 1919 | $1,999,791.82 |

The principal changes in tax liability are due to liquidating dividend of Tex-Penn Oil Co., not reported.

All changes were fully discussed with J. C. Adams, Attorney, who does not agree to the adjustment, contending that the sale of assets by Tex-Penn Oil Co. to Transcontinental Oil Co. was a merger instead of a sale of assets.

*Nature of business*—Oil Man.

The above named individual was married and living with his wife, Dec. 31, 1919 and is entitled to the exemption allowed.

The following schedule shows the acquisition of the Transcontinental Common Stock by the taxpayer and its disposition:

*Respondent's Exhibit Y.*

| *Date* | *Remarks* | | | *No. of Shares* |
|---|---|---|---|---|
| 7/27/19 | Liquidating dividends from Tex-Penn Oil Co. Lot #1 | | | 415,625 |
| 7/27/19 | Liquidating dividends from Tex-Penn Oil Co. Lot #2 | | 307,834 | |
| | Less—Portion of above lot #2 set aside as a gift to Employees, which portion was assigned to F. B. Parriott—Total amount of stock agreed between F. B. Parriott and M. L. Benedum for distribution to employees. | 99,500 shares | | |
| | Deduct M. L. B. portion, being .59375% of 99,500. | 59,078.125 | | |
| | Portion applicable to F. B. Parriott | 40,421.875 | 40,421.875 | |
| | | | 267,412.125 | 267,412.125 |
| | Total liquidating dividend | | | 683,037.125 |

## SCHEDULE 1

### *Year 1919*

| Block | Description | Per Dept. Letter dated 1/24/23 IT:HR:F-4-JMM-357 | Addns. to Income | Income as Amended |
|---|---|---|---|---|
| D | Profits on Sales | 1,398,236.23 | 17,383,461.19 | 18,781,697.42 |
| E | Inc. from Rents & Royalties | 179,887.27 | | 179,887.27 |
| F | Int. on Bds. tax free | 19,375.00 | | 19,375.00 |
| G | Other Income | 66,682.88 | | 66,682.88 |
| H | Total | 1,664,181.38 | | 19,047,642.57 |
| I | General deductions | | | |
| | Interest paid | 4,169.46 | | 4,169.46 |
| | Taxes paid | 14,511.26 | | 14,511.26 |
| | Donations | 8,456.43 | | 8,456.43 |
| | Bad debts | 196,319.16 | 86,863.55 | 109,455.61 |
| | | 223,456.31 | | 136,592.76 |
| J | Income subject to normal tax | 1,440,725.07 | | 18,911,049.81 |
| Ka | Cash dividends recd. | 67,063.36 | | 67,063.36 |
| | Taxable int. on bonds & other obligations of the U. S. | 1,684.28 | | 1,684.28 |
| L | Income subject to surtax. | 1,509,472.71 | 17,470,324.74 | 18,979,797.45 |

*Respondent's Exhibit Y.*

## SCHEDULE 1-A

### BLOCK D

*Year 1919*

| | | | *Reported* | | *Amended* |
|---|---|---|---|---|---|
| Sale price of 6/16 of 5/8 int. in Duke-Knoles Pool originally owned—for cash, no cost..... | 1,368,750.00 | | (1) 3,000,000.00 | | |
| Less—Reduction in sale price.... | none | 1,368,750.00 | (1) 65,625.00 | | |
| Profit subject to limitation of surtax..... | | | | | 2,934,375.00 |
| Sale price of 6/16 of 5/8 int. in Duke-Knoles Pool: | | | | | |
| Acq. 7/12/19—net..... | | | (2) 2,934,375.00 | | |
| Cost ..... | | | (2). 3,214,285.72 | | |
| Loss ..... | | | | | (279,910.72) |
| Liquidating dividends received from Tex-Penn Oil Co. in Transcontinental Oil Co. Stock: | | | | | |
| Value of 683,037.125 shares at $47.55 per share ..... | | | (3) 32,478,415.29 | | |
| Cost of stock..... | | | (4) 16,427,864.52 | | 16,050,550.77 |
| Liquidating dividends recd. from Riverside Western Oil Co. on 5,589 shares of preferred stock at $25.00 par..... | | | (5) 139,725.00 | | |
| Cost of Riverside Western Pref. Stock at $15.00 per share..... | | | (5) 83,835.00 | | |
| Profit on liquidation..... | | none | | | 55,890.00 |
| Liquidating dividends recd. from Riverside Eastern Oil Co. on 11,900 shares preferred stock at $5.00 par ..... | 59,500.00 | | (6) 59,500.00 | | |
| Cost of Riverside East. Pref. Stk. at $3.50 per..... | 32,956.14 | | (6) 41,650.00 | | |
| | | 26,543.86 | | | 17,850.00 |
| | | 1,395,293.86 | | | 18,778,755.05 |
| | | | | | 1,395,293.86 |
| Net increase in income..... | | | | | 17,383,461.19 |

*Respondent's Exhibit Y.*

## SCHEDULE 1-A

### BLOCK D

### EXPLANATION OF CHANGES

*Year 1919*

(1) Sale price of interest in Duke-Knoles Pool reported consisted of net cash received. Since 6/16 of the outstanding capital stock of the Tex-Penn Oil Co. was purchased out of the proceeds of the sale price of the Duke-Knoles Pool lease, sales price has been adjusted to agree with the facts. (Reference is made Revenue Agent C. R. Gideon's report dated March 23, 1927 of the Oklahoma Division for full details as this transaction as shown on Exhibits A, A-1 and A-2 on Tex-Penn Oil Co. A summary of this transaction has been attached to this report.)

(2) Sale price of the 6/16 interest in the Duke-Knoles Pool acquired 7/12/19 from J. L. Kirkland, J. B. Lantz and W. E. Wrather has been set up separately since profit on this transaction is not subject to the limitation on surtax. (For the computation of cost, reference is made to Revenue Agent C. R. Gideon's report on Tex-Penn Oil Co. dated 3/23/27, Exhibits A, A-1 and A-2. See also summary of this transaction which has been attached to this report.)

(3) For computation of fair market value of Transcontinental Oil Co. stock see conference memorandum IT:CA:Jen-2228 on Tex-Penn Oil Co. dated 5/21/25.

(4) Cost of Tex-Penn Stock has been computed as follows:

| | | |
|---|---|---|
| Taxpayer share of development cost | | 105,911.40 |
| Nominal consideration to Kirkland, Wrather and Lantz | | 15.00 |
| Amt. paid Kirkland for his stock | | 642,857.14 |
| Amt. paid Lantz for his stock | | 428,571.43 |
| Amt. paid Wrather for his stock | | 214,285.71 |
| Assessment to pay off liabilities (this amt. included under Block I—as Bad debts) | | 86,863.50 |
| Total cost as per R. A. report dated 3/23/27 on Tex-Penn Oil Co. | | 1,478,504.18 |
| Add— | | |
| Proportion of tax liability assessed against Tex-Penn Oil for the year 1919 in the amount of $22,058,117.17, which liability is to be assumed by M. L. Benedum and F. B. Parriott, the sole stockholders of the Tex-Penn Oil Co. and the recipients of the liquidating dividends of 1,007,834 shares, of which Mr. M. L. Benedum received 683,037.125 shares and Mr. F. B. Parriott 324,796.875 shares respectively. The tax liability of 22,058,117.17 has been allocated between the two stockholders as follows: | | |
| $22,058,117.17 divided by 1,007,834 shares equals $21.8866 per share for tax liability: | | |
| No. of shares of Transcontinental Co. stock received by M. L. Benedum | 683,037.125 | |
| Tax liability per share | 21.8866 | |
| Tax liability applicable to M. L. Benedum to be treated as cost of Tex-Penn Oil Co. stock | 14,949,360.34 | 14,949,360.34 |
| Total cost of Tex-Penn Oil Co. stock | | 16,427,864.52 |

*Respondent's Exhibit Y.*

The following data is based on Revenue Agent C. R. Gideon's report dated March 23, 1927, covering an examination of the Tex-Penn Oil Co. Transcontinental Oil Co. paid Benedum and Parriott for their 5/8 interest as follows:

| | | |
|---|---|---|
| In re: M. L. Benedum. | | |
| Check #1 | Dated 7/31/29 to F. B. Parriott, Atty..... | 5,000,000.00 |
| Check #2 | Dated 7/31/29 to F. B. Parriott, Atty..... | 250,000.00 |
| Check #5 | Dated 7/31/29 to M. L. Benedum & F. B. Parriott ..... | 3,400,000.00 |
| Check #6 | Dated 7/31/29 to Tex-Penn Oil Co..... | 350,000.00 |
| | Total..... | 9,000,000.00 |

The total cash received of $9,000,000 is accounted for as follows:

| | |
|---|---|
| Paid to M. L. Benedum for his 6/16 of 5/8 interest in Duke-Knoles Pool ..... | 3,000,000.00 |
| Paid to M. L. Benedum for his 3/16 of 5/8 interest in Duke-Knoles Pool and stock— | |
| Purchased from J. L. Kirkland..... | 1,500,000.00 |
| " " J. B. Lantz, 2/16..... | 1,000,000.00 |
| " " W. E. Wrather, 1/16..... | 500,000.00 |
| " " F. B. Parriott, 3/16..... | 2,250,000.00 |
| " " W. E. Wrather, 1/16..... | 750,000.00 |
| | 9,000,000.00 |

M. L. Benedum and F. B. Parriott arranged with Kirkland, Lantz and Wrather to purchase their Tex-Penn stock and their combined interest of 7/16 of 5/8 interest in the Duke-Knoles pool for a cash consideration of $5,250,000. The payments to these individuals for stock and interest in pool is allocated as follows:

| *Payment made by* | *To* | *Remarks* | *Tex-Penn Stock* | *Int. in Pool* |
|---|---|---|---|---|
| M. L. Benedum | J. L. Kirkland, | 3/16 of 5/8 int. in Duke-Knoles.. | | 1,607,142.86 |
| M. L. Benedum | J. L. Kirkland, | 3/16 of capital stock in Tex-Penn.. | 642,857.14 | |
| M. L. Benedum | J. B. Lantz, | 2/16 of 5/8 int. in Duke-Knoles..... | | 1,071,428.57 |
| M. L. Benedum | J. B. Lantz, | 2/16 of capital stock in Tex-Penn... | 428,571.43 | |
| M. L. Benedum | W. E. Wrather, | 1/16 of 5/8 int. in Duke-Knoles.. | | 535,714.29 |
| M. L. Benedum | W. E. Wrather, | 1/16 of capital stock in Tex-Penn | 214,285.72 | |
| | Totals..... | | 1,285,714.29 | 3,214,285.72 |

| | | | |
|---|---|---|---|
| F. B. Parriott W. E. Wrather, 1/16 of 5/8 int. in Duke-Knoles.. | | | 535,714.28 |
| F. B. Parriott W. E. Wrather, 1/16 of capital stock in Tex-Penn.. | | 214,285.72 | |
| | | 214,285.72 | 535,714.28 |
| | | 1,500,000.01 | 3,750,000.00 |
| | | | 1,500,000.00 |
| Total consideration paid to Kirkland, Lantz & Wrather..... | | | 5,250,000.00 |

## SCHEDULE No. 2

### *Year 1919*

### COMPUTATION OF TAX

| | | | |
|---|---|---|---|
| Net Taxable income (Schedule No. 1)..... | | 18,979,797.45 | |
| Less: Personal Exemption ..... | 2,000.00 | | |
| Dividends ..... | 67,063.36 | | |
| Interest on U. S. Obligations..... | 1,684.28 | 70,747.64 | |
| Income subject to normal tax..... | | 18,909,049.81 | |
| Taxable at 4%..... | | 4,000.00 | 160.00 |
| " " 8%..... | | 18,905,049.81 | 1,512,403.98 |
| Taxable at surtax rates..... | | 18,979,797.45 | 12,270,378.34 |
| Total Tax ..... | | | 13,782,942.32 |
| Proportion of income from sale of discovery oil property against total net income— | | | |
| $2,934,375.00 divided by $18,979,797.45..= 154,605.17% | | | |
| $12,270,378.34 x .15460517%.....= 1,897,063.93 Surtax applicable to sale of oil property which is in excess of 20% of sale price, $2,934,375.00. | | | |
| Surtax on sale of oil property..... | 1,897,063.93 | | |
| 20% of sales price of property..... | 586,875.00 | | |
| Excess surtax to be deducted... ..... | 1,310,188.93 | | 1,310,188.93 |
| | | | 12,472,753.39 |
| Tax paid at source..... | | 387.50 | |
| Tax previously assessed..... | | 472,574.07 | 472,961.57 |
| Additional tax assessable..... | | | 11,999,791.82 |

## Respondent's Exhibit Z.

Report of examining agent, C. R. Gideon, dated March 23, 1927, covering examination made in connection with the return of F. B. Parriott for the year 1919. (See folder of unprinted exhibits.)

The following are portions of this report and attached schedules:

*Preliminary Statement (Individual).*

Principal changes in tax liability are due to liquidating dividend Tex-Penn Oil Co., not reported.

All changes were fully explained to J. C. Adams, Atty., who does not agree to the adjustments.

Basis for taxpayer's objections: Taxpayer contends that sale of assets by Tex-Penn Oil Co. to Transcontinental Oil Co. was a merger instead of a sale of assets.

Nature of business—Oil man.

---

Transcontinental common stock acquired. During 1919 and 1920 taxpayer acquired the following Transcontinental Oil Co. common stock:

| | | |
|---|---|---|
| 7/27/19 | Liquidating dividends from Tex-Penn Oil Co.... | 284375 shs |
| 1/10/20 | Purchased from J. D. Parriott..... | 5000 |
| 10/ 1/19 | Liquidating dividends from Pitt-Tex Oil Co..... | 455-5/6 |
| 4/29/20 | Liquidating dividends from Riverside Western Oil Co. ..... | 35-5/7 |
| | Total..... | 289866-33/42 |

*Respondent's Exhibit Z.*

## SCHEDULE 1

*Year 1919*

| Block | Description | Per Orig. & Amend. Return | Block Adjustments: Additions to Income | Block Adjustments: Reductions from Income | Income as Amended |
|---|---|---|---|---|---|
| B | Salaries & Comm..... | 8433.95 | | | 8433.95 |
| D | Profit on Sales..... | 2199965.21 | 13457981.06 | | 15657946.27 |
| E | Rents & Royalties..... | 79662.58 | | | 79662.58 |
| G | Other Income ..... | 18374.92 | | | 18374.92 |
| H | Total ..... | 2306436.66 | | | 15764417.72 |
| I | General deductions ..... | 59875.26 | 43671.75 | | 16303.51 |
| J | Inc. Subj. to Norm. Tax.... | 2246561.40 | | | 15748114.21 |
| K(a) | Cash div. recd..... | 4069.56 | | | 4069.56 |
| L | Inc. Subj. to surtax..... | 2250630.96 | 13501272.81 | | 15752183.77 |

NOTE: Original & Amended returns show same income but different tax liability due to difference in computation of tax.

## SCHEDULE 1-A

### EXPLANATION OF ITEMS

### BLOCK D

*Year 1919*

| | Profit on Sales and Liquidation of Stocks: Reported | | Corrected | |
|---|---|---|---|---|
| Sale price 3/16 of 5/8 interest in Duke-Knoles Pool originally owned for cash, no cost..... | 2184375.00 | | (1) 2250000.00 | |
| Less: Reduction in sale price..... | None | | (1) 49218.75 | |
| Profit subject to limitation of surtax ..... | | 2184375.00 | | 2200781.25 |
| Sale price 1/16 of 5/8 interest in Duke-Knoles Pool acquired 7/12/19 —net ..... | | | (2) 733593.75 | |
| Cost ..... | | | (2) 535714.28 | |
| Profit ..... | | | | 197879.47 |
| Sale price Tropical Oil Co. Stock.... | 23590.21 | | 23590.21 | |
| Cost 1916..... | 8000.00 | 15590.21 | 8000.00 | 15590.21 |
| Liquidating dividends received from Tex-Penn Oil Co. in Transcontinental Oil Co. Stock—value of 284,375 shares recd. at $47.53 per share ..... | | 13522031.25 | (3) 13516343.75 | |
| Cost of stock 1918 & 1919..... | | | (4) 310663.17 | 13211368.08 |
| Profit ..... | | | | 13205680.58 |

*Respondent's Exhibit Z.*

## Explanation of Items

### Block D

(1) Sale price of interest in Duke-Knoles Pool reported consisted of net cash received. Since 1/16 of the outstanding capital stock of the TexPenn Oil Co. was purchased out of the proceeds of the sale price of the Duke-Knoles Pool lease, sale price has been adjusted to agree with the facts (see Exhibits A, A-1 & A-2 in Special Report dated 3/23/27 on Tex-Penn Oil Co.).

(2) Sale price of the 1/16 interest in Duke-Knoles Pool, acquired 7/12/19 from W. E. Wrather, has been set up separately since profit on this transaction is not subject to the limitation on surtax. (For computation of cost see Special Report on Tex-Penn Oil Co. dated 3/23/27, Exhibits A/1 & A-2.)

(3) For computation of fair market value of Transcontinental Oil Co. Stock see Conference memorandum IT:CA:Jen-2228 on Tex-Penn Oil Co. dated 5/21/25.

(4) Cost of Tex-Penn stock has been computed as follows:

| | |
|---|---|
| Taxpayer's share of development costs | 52930.70 |
| Nominal consideration to minority int. | 15.00 |
| Cost of ½ of Wrather's holdings | 214285.72 |
| Proportionate part of assessment to pay liabilities | 43431.75 |
| Total cost | 310663.17 |

## SCHEDULE 2

### Computation of Tax

| | | |
|---|---|---|
| Net taxable income | | 15752183.77 |
| Less: Personal exemption | 2200.00 | |
| Dividends | 4069.56 | 6269.56 |
| Income subject to normal tax | | 15745914.21 |
| Tax 4% on 4000.00 | 160.00 | |
| Tax 8% on 15741914.21 | 1259353.14 | |
| Surtax on 15752183.77 | 10172429.45 | |
| Total tax | | 11431942.59 |
| Credits: | | |
| Surtax on sale of discovery oil properties | 1421218.30 | |
| Limitation 20% of 2200781.25 | 440156.25 | |
| | | 981062.05 |
| Credit on surtax | | 10450880.54 |
| Net tax assessable | | 626235.82 |
| Tax previously assessed | | 9824624.72 |
| Additional tax | | |

Note: Surtax on discovery oil property sold based on following figures:

| | |
|---|---|
| Total net income | 15752183.77 |
| Net profit on discovery oil property sold | 2200781.25 |
| $2200781.25 divided by 15,752,183.77 equals | 139712.77 |
| 139712.77 times 10,172,429.45 equals | 1421218.30 |

## Respondent's Exhibit AA.

Report of examining agent C. R. Gideon dated March 23, 1927, covering an examination made in connection with the returns of Tex-Penn Oil Company, M. L. Benedum and F. B. Parriott for the year 1919. (See folder of unprinted exhibits.)

The following are portions of the report and attached schedules:

### History of Tex-Penn Oil Co.

The corporation was organized on or about October 31, 1919, under authority of West Virginia law. Its authorized capital stock was 80,000 shares of common with a par value of $25.00 per share, or a total par value of $2,000,000.00. This stock was issued in payment for a 2/8 interest in the Duke-Knoles Pool, consisting of approximately 3400 acres of land in the state of Texas. The only cost of this stock to the stockholders consisted of assessments made for the purpose of paying drilling costs and development expense.

### Sale of Interest to Benedum and Parriott

On or about July 12, 1919, M. L. Benedum and F. B. Parriott arranged with Kirkland, Lantz and Wrather to purchase their Tex-Penn stock and their combined interest of 7/16 of 5/8 interest in the Duke-Knoles pool, for a cash consideration of $5,250,000.00, this price being based on a value of $12,000,000.00 for the 7/8 interest, or a total working interest. The total consideration of $5,250,000.00 included the 7/16 of the Tex-Penn stock owned by Kirkland, Lantz and Wrather and also their individual interests in the lease.

*Respondent's Exhibit AA.*

Allocation of sales price as between interests in the lease sold to Benedum and Parriott and the Tex-Penn stock sold to Benedum and Parriott has been made as follows:

| | | |
|---|---|---|
| Total value of property (Duke-Knoles Pool) | | 12,000,000.00 |
| Part owned by individuals (5/8 interest) | 8,571,428.55 | |
| Part owned by Tex-Penn Oil Co. (2/8 interest) | 3,428,571.45 | 12,000,000.00 |

Since Kirkland, Lantz and Wrather owned collectively 7/16 of the total Tex-Penn stock outstanding, 7/16 of $3,428,571.45, or $1,500,000.00, has been allocated as the sale price of their Tex-Penn stock, and 7/16 of $8,571,428.55 or $3,750,000.000, has been allocated as the sale price of their combined individual interests in the Duke-Knoles pool.

SALE OF BENEDUM'S AND PARRIOTT'S HOLDINGS TO THE TRANSCONTINENTAL OIL COMPANY

After closing the deal with minority interests, Benedum and Parriott sold their 5/8 interest in Duke-Knoles Pool but not their stock in the Tex-Penn Oil Co., to the Transcontinental Oil Co., Benedum receiving $6,000,000.00 for his 12/16 of 5/8 interest, and Parriott $3,000,000.00 for his 4/16 of 5/8 interest. Sale to the Transcontinental Oil Co. by Benedum and Parriott was on the basis of $14,500,000.00 for Benedum and $17,500,000.00 for Parriott for the entire working interest. This difference is explained under Exhibit "A"-2.

A total of $350,000.00 was received for the benefit of the Tex-Penn Oil Co. by deducting that amount from the sale price of each individual, which was in proportion to their Tex-Penn stockholdings. Benedum and Parriott contributed $196,875.00 and Kirkland, Wrather and Lantz, $153,125.00 making a total of $350,000.00. (See Exhibits "A"-1 and "A"-2.)

*Respondent's Exhibit AA.*

EVIDENCE OF TWO SEPARATE TRANSACTIONS

Evidence that Tex-Penn minority stock and minority interests in Duke-Knoles consisting of 7/16 of 5/8 interest owned by Kirkland, Lantz & Wrather was first purchased by Benedum and Parriott and resold to the Transcontinental Oil Co. by them is submitted as follows:

1. F. B. Parriott's statement to examining officer that purchase of minority interests was regarded as a purchase of their entire holdings represented by their stock and interests in the Duke-Knoles Pool lease. Mr. Parriott further explained that purchase was on basis of $12,000,000.00 for entire working interest.

2. Letter addressed to F. B. Parriott, dated July 12, 1919 and signed by W. E. Wrather, J. L. Kirkland and J. B. Lantz (photostatic copy included in enclosures) recites as follows:

> "Our entire interests in the stock of Tex-Penn Oil Co. and in the leases covered by the assignment above referred to are paid for in full by the considerations agreed upon between us."

3. The nominal consideration of $5.00 to be paid to each, Wrather, Kirkland and Lantz, as stated in letter dated July 12, 1919 (Photostatic copy included in enclosures) is contradicted in the same letter by the last paragraph, quoted under the paragraph above.

4. Transcontinental Oil Co. paid Benedum and Parriott for their entire 5/8 interest as follows:

| | | |
|---|---|---|
| Check #1, dated 7-31-19, | to F. B. Parriott, Atty..... | $5,000,000.00 |
| Check #2, dated 7-31-19, | to F. B. Parriott, Atty..... | 250,000.00 |
| Check #5 " " " " | to M. L. Benedum and F. B. Parriott ..... | 3,400,000.00 |
| Check #6 " " " " | to Tex-Penn Oil Co..... | 350,000.00 |
| Total..... | | $9,000,000.00 |

Payments of the amounts due Kirkland, Lantz & Wrather were then made out of the $5,250,000.00 paid to F. B. Parriott, Atty. $153,125.00 having been deducted for benefit of Tex-Penn Oil Co.

5. F. B. Parriott's statement to examining officer that Mr. Benedum agreed that $3,000,000.00 should be deducted from the amount paid him.

6. The fact that the computation as set up in Exhibit "A"-1 and "A"-2, according to the above evidence, ties out exactly with net cash received by each of the parties and the amounts reported by them.

Exhibits "A," "A"-1 and "A"-2, submitted herewith, show the net profit realized through the sale of Tex-Penn stock and minority interests in lease to Benedum and Parriott by minority interests and also profit made by Benedum and Parriott on the sale of their interests in the Duke-Knoles pool lease to the Transcontinental Oil Co.

Cash reported as having been received by the various interests for the sale of their interests in the Duke-Knoles pool has been found to have been stated correctly as to amounts, but incorrectly as to source. In the case of the minority interests, part of the cash received was for their interests in Duke-Knoles pool and part for their Tex-Penn stock. In the case of Benedum and Parriott, the entire amount received was for their interest in the Duke-Knoles pool but part of this amount was used by them to pay minority interests for the 7/16 of 5/8 interest in the Duke-Knoles pool and for 7/16 interest in the Tex-Penn stock purchased by them from Kirkland, Wrather & Lantz.

LIQUIDATION OF TEX-PENN OIL CO.

At the time Tex-Penn Oil Company's assets were sold to the Transcontinental Oil Co., its capital stock was

100% owned by M. L. Benedum and F. B. Parriott, Mr. Benedum's interest being 3/4 and Mr. Parriott's 1/4. The properties were sold as of July 1, 1919 for a consideration of $350,000.00 cash and 1,007,834 shares of Transcontinental Oil Company's stock.

The stock, however, was never issued to the Tex-Penn Oil Co. but direct to M. L. Benedum and F. B. Parriott, the original certificates having been dated July 29, 1919. (See extracts of Tex-Penn Oil Co. minutes dated July 25, 1919 submitted herewith as an enclosure.)

## EXHIBIT A

PROPERTIES PURCHASED BY TRANSCONTINENTAL OIL CO. AT DATE OF ORGANIZATION & CONSIDERATION PAID

| *From Whom Purchased* | *Assets Purchased as Reported* | *No. Shares Transcontinental Stk. Recd.* | *Cash Recd. as Reported* |
|---|---|---|---|
| Tex-Penn Oil Co. | 2/8 interest in Duke-Knoles Pool | 1,007,834 | 350,000. |
| M. L. Benedum | 6/16 of 5/8 " " " " " | | 1,368,750. |
| F. B. Parriott | 3/16 of 5/8 " " " " " | | 2,184,375. |
| J. L. Kirkland | 3/16 of 5/8 " " " " " | | 2,184,375. |
| J. B. Lantz | 2/16 of 5/8 " " " " " | | 1,456,250. |
| W. E. Wrather | 2/16 of 5/8 " " " " " | | 1,456,250. |
| Riverside Eastern Oil Co. | Properties, assets & inventories | 41,666 | 1,250,000. |
| Riverside Western Oil Co. | Properties, assets & inventories | 41,667 | 1,250,000. |
| Pittsburgh-Texas Oil & Gas Co. | Properties & inventories | 158,833 | |
| Totals..... | | 1,250,000 | 11,500,000. |

NOTE: For explanation of cash received as reported see Exhibits A-1 & A-2. For further information on sale of Duke-Knoles Pool see attached enclosures.

## EXHIBIT A-1

PROFIT ON ASSETS SOLD AT 7/31/19 BY KIRKLAND, LANTZ & WRATHER TO BENEDUM & PARRIOTT.

| *By Whom Sold* | *Description of Assets Sold* | *To Whom Sold* | *Cost* | *Sale Price* | *Deduction from Sale Price (2)* | *Net Profit* | *Net Cash Received* |
|---|---|---|---|---|---|---|---|
| J. L. Kirkland | 3/16 of 5/8 interest in Duke-Knoles Pool | M. L. Benedum | | 1,607,142.86 | | 1,607,142.86 | |
| " " " | 2/16 of Capital stock of Tex-Penn Oil Co. | " " " | (1) 96,362.45 | 642,857.14 | 65,625.00 | 480,869.69 | 2,184,375.00 |
| J. B. Lantz | 2/16 of 5/8 interest in Duke-Knoles Pool | " " " | | 1,071,428.57 | | 1,071,428.57 | |
| " " " | 2/16 of Capital stock of Tex-Penn Oil Co. | " " " | 64,241.64 | 428,571.43 | 43,750.00 | 320,579.79 | 1,456,250.00 |
| W. E. Wrather (3) | 1/16 of 5/8 interest in Duke-Knoles Pool | " " " | | 535,714.29 | | 535,714.29 | |
| " " " | 1/16 of " " " " " " | F. B. Parriott | | 535,714.28 | | 535,714.29 | |
| " " " | 1/16 of Capital stock of Tex-Penn Oil Co. | M. L. Benedum | 32,120.82 | 214,235.71 | 21,875.00 | 160,289.89 | |
| " " " | 1/16 " " " " " " " | F. B. Parriott | 32,120.82 | 214,285.72 | 21,875.00 | 160,289.90 | 1,456,250.00 |
| | | | 224,845.73 | 5,250,000.00 | 153,125.00 | 4,872,029.27 | 5,096,875.00 |

(1) Details of cost of Tex-Penn stock to various stockholders has been found to be as follows:

| | *M. L. Benedum* | *F. B. Parriott* | *J. L. Kirkland* | *J. B. Lantz* | *W. E. Wrather* |
|---|---|---|---|---|---|
| Original cash payment on stock..... | 85,550.00 | 42,750.00 | 42,750.00 | 28,500.00 | 28,500.00 |
| Assessment for drilling costs..... | 20,361.40 | 10,180.70 | 10,180.70 | 6,787.14 | 6,787.14 |
| Nominal consideration to Kirkland, Wrather & Lantz..... | 15.00 | 15.00 | | | |
| Assessment to pay off liabilities..... | 86,863.50 | 43,431.75 | 43,431.75 | 28,954.50 | 28,954.50 |
| Amount paid Kirkland for his stock.... | 642,857.14 | | | | |
| Amount paid Lantz for his stock..... | 428,571.43 | | | | |
| Amount paid Wrather for his stock.... | 214,285.71 | 214,285.72 | | | |
| Totals..... | 1,478,504.18 | 310,663.17 | 96,362.45 | 64,241.64 | 64,241.64 |

(2) A proportionate amount was deducted from the sale price of each individual to arrive at the $350,000.00 paid to Tex-Penn Oil Co.; Kirkland, Lantz & Wrather's share being $153,125.00. The amounts shown as deducted were deducted before the above individuals received payment & consequently was not actually received by them. However, in order to tie the above figures up with the contracts, letters, etc., submitted as enclosures and also with net cash received, the above items are set out separately, the sale price being overstated by an equal amount in each case.

## EXHIBIT A-2

PROFIT ON SALE OF 5/8 INTEREST IN DUKE-KNOLES POOL TO TRANSCONTINENTAL OIL CO. BY M. L. BENEDUM & F. B. PARRIOTT.

| *From Whom Acquired* | *Description of Assets Sold* | *Cost* (1) | *Sale Price* | *Deduction from Sale Price* | *Net Profit (Loss)* | *Amount Paid to Minority Interest* (2) | *Total Cash Paid* | *Net Cash Received* | *By Whom Sold* |
|---|---|---|---|---|---|---|---|---|---|
| Original interest | 6/16 of 5/8 Int. in Duke-Knoles Pool | | 3,000,000.00 | 62,625.00 | 2,934,375.00 | | 65,625.00 | | M. L. Benedum |
| J. L. Kirkland | 3/16 of 5/8 Int. in Duke-Knoles Pool | 1,607,142.86 | 1,500,000.00 | 32,812.50 | {139,955.36} | 2,250,000. | 2,282,812.50 | | " " " |
| J. B. Lantz | 2/16 of " " " " " " | 1,071,428.57 | 1,000,000.00 | 21,875.00 | {93,303.57} | 1,500,000. | 1,521,875.00 | | " " " |
| W. E. Wrather | 1/16 " " " " " " | 535,714.29 | 500,000.00 | 10,937.50 | {46,651.79} | 750,000. | 760,937.50 | | " " " |
| Totals for M. L. Benedum..... | | 3,214,285.72 | (3) 6,000,000.00 | 131,250.00 | 2,654,464.28 | 4,500,000. | 4,631,250.00 | 1,368,750.00 | " " " |
| Original interest | 3/16 of 5/8 interest in Duke-Knoles Pool ..... | | 2,250,000.00 | 49,218.75 | 2,200,781.25 | | 49,218.75 | | F. B. Parriott |
| W. E. Wrather | 1/16 of 5/8 Int. in Duke-Knoles Pool | 535,714.28 | 750,000.00 | 16,406.25 | 197,879.47 | 750,000.00 | 766,406.25 | | " " " |
| Totals for F. B. Parriott..... | | 535,714.28 | 3,000,000.00 | 65,625.00 | 2,398,660.72 | 750,000.00 | 815,625.00 | 2,184,375.00 | " " " |

(1) Pro rata amount deducted from interest sold by each individual has been considered as a deduction from sale price instead of as an addition to cost. The total deducted amounted to $350,000.00, which was paid to the Tex-Penn Oil Co. to be used in paying off its liabilities. (This includes minority interests.)

(2) Amounts paid by M. L. Benedum & F. B. Parriott out of the proceeds of the sale of the 5/8 interest in the Duke-Knoles Pool to Kirkland, Lantz & Wrather included payments for Tex-Penn stock purchased as well as 6/16 of 5/8 interest in Duke-Knoles Pool purchased by Benedum & 1/16 of 5/8 interest purchased by Parriott.

(3) Since Benedum owned a 12/16 of 5/8 interest in Duke-Knoles Pool & Parriott a 4/16 of 5/8 interest, after they had acquired minority interests, Benedum should have received $9,000,000.00 cash & Parriott $3,000,000.00. Mr. Parriott has explained this difference by stating that Mr. Benedum agreed to accept $3,000,000.00 less than his proportionate part, to avoid having the deal fall through, since the underwriters had decided that $20,000,000.00 was all they could afford to pay for the 500,000 shares of Transcontinental stock subscribed for by them instead of $23,000,000.00 as originally agreed upon.

NOTE: The $153,125.00 shown as a reduction in sale price of minority interests in Exhibit A-1 has been deducted from the $350,000.00 deducted from the sale price of Benedum & Parriott, who actually

# EXHIBIT A-1

## PROFIT ON ASSETS SOLD AT 7/31/19 BY KIRKLAND, LANTZ & WRATHER TO BENEDUM & PARRIOTT.

| *By Whom Sold* | *Description of Assets Sold* | *To Whom Sold* | *Cost* | *Sale Price* | *Deduction from Sale Price (2)* | *Net Profit* | *Net Cash Received* |
|---|---|---|---|---|---|---|---|
| J. L. Kirkland | 3/16 of 5/8 interest in Duke-Knoles Pool | M. L. Benedum | | 1,607,142.86 | | 1,607,142.86 | |
| " " " | 2/16 of Capital stock of Tex-Penn Oil Co. | " " " | (1) 96,362.45 | 642,857.14 | 65,625.00 | 480,869.69 | 2,184,375.00 |
| J. B. Lantz | 2/16 of 5/8 interest in Duke-Knoles Pool | " " " | | 1,071,428.57 | | 1,071,428.57 | |
| " " " | 2/16 of Capital stock of Tex-Penn Oil Co. | " " " | 64,241.64 | 428,571.43 | 43,750.00 | 320,579.79 | 1,456,250.00 |
| W. E. Wrather (3) | 1/16 of 5/8 interest in Duke-Knoles Pool | " " " | | 535,714.29 | | 535,714.29 | |
| " " " | 1/16 of " " " " " " " | F. B. Parriott | | 535,714.28 | | 535,714.28 | |
| " " " | 1/16 of Capital stock of Tex-Penn Oil Co. | M. L. Benedum | 32,120.82 | 214,235.71 | 21,875.00 | 160,289.89 | |
| " " " | 1/16 " " " " " " " " | F. B. Parriott | 32,120.82 | 214,285.72 | 21,875.00 | 160,289.90 | 1,456,250.00 |
| | | | 224,845.73 | 5,250,000.00 | 153,125.00 | 4,872,029.27 | 5,096,875.00 |

(1) Details of cost of Tex-Penn stock to various stockholders has been found to be as follows:

| | *M. L. Benedum* | *F. B. Parriott* | *J. L. Kirkland* | *J. B. Lantz* | *W. E. Wrather* |
|---|---|---|---|---|---|
| Original cash payment on stock..... | 85,360.00 | 42,750.00 | 42,750.00 | 28,500.00 | 28,500.00 |
| Assessment for drilling costs..... | 20,361.40 | 10,180.70 | 10,180.70 | 6,787.14 | 6,787.14 |
| Nominal consideration to Kirkland, Wrather & Lantz..... | 15.00 | 15.00 | | | |
| Assessment to pay off liabilities..... | 86,863.30 | 43,431.75 | 43,431.75 | 28,954.50 | 28,954.50 |
| Amount paid Kirkland for his stock.... | 642,857.14 | | | | |
| Amount paid Lantz for his stock..... | 428,571.43 | | | | |
| Amount paid Wrather for his stock.... | 214,285.71 | 214,285.72 | | | |
| Totals..... | 1,478,504.18 | 310,663.17 | 96,362.45 | 64,241.64 | 64,241.64 |

(2) A proportionate amount was deducted from the sale price of each individual to arrive at the $350,000.00 paid to Tex-Penn Oil Co.; Kirkland, Lantz & Wrather's share being $153,125.00. The amounts shown as deducted were deducted before the above individuals received payment & consequently was not actually received by them. However, in order to tie the above figures up with the contracts, letters, etc., submitted as enclosures and also with net cash received, the above items are set out separately, the sale price being overstated by an equal amount in each case.

# EXHIBIT A-2

## PROFIT ON SALE OF 5/8 INTEREST IN DUKE-KNOLES POOL TO TRANSCONTINENTAL OIL CO. BY M. L. BENEDUM & F. B. PARRIOTT.

| *From Whom Acquired* | *Description of Assets Sold* | *Cost (1)* | *Sale Price* | *Deduction from Sale Price* | *Net Profit (Loss)* | *Amount Paid to Minority Interest (2)* | *Total Cash Paid* | *Net Cash Received* | *By Whom Sold* |
|---|---|---|---|---|---|---|---|---|---|
| Original interest | 6/16 of 5/8 Int. in Duke-Knoles Pool | | 3,000,000.00 | 62,625.00 | 2,934,375.00 | | 65,625.00 | | M. L. Benedum |
| J. L. Kirkland | 3/16 of 5/8 Int. in Duke-Knoles Pool | 1,607,142.86 | 1,500,000.00 | 32,812.50 | (139,955.36) | 2,250,000. | 2,282,812.50 | | " " " |
| J. B. Lantz | 2/16 of " " " " " " " | 1,071,428.57 | 1,000,000.00 | 21,875.00 | (93,303.57) | 1,500,000. | 1,521,875.00 | | " " " |
| W. E. Wrather | 1/16 " " " " " " " " | 535,714.29 | 500,000.00 | 10,937.50 | (46,651.79) | 750,000. | 760,937.50 | | " " " |
| Totals for M. L. Benedum..... | | 3,214,285.72 | (3) 6,000,000.00 | 131,250.00 | 2,654,464.28 | 4,500,000. | 4,631,250.00 | 1,368,750.00 | " " " |
| Original interest | 3/16 of 5/8 interest in Duke-Knoles Pool ..... | | 2,250,000.00 | 49,218.75 | 2,200,781.25 | | 49,218.75 | | F. B. Parriott |
| W. E. Wrather | 1/16 of 5/8 Int. in Duke-Knoles Pool | 535,714.28 | 750,000.00 | 16,406.25 | 197,879.47 | 750,000.00 | 766,406.25 | | " " " |
| Totals for F. B. Parriott..... | | 535,714.28 | 3,000,000.00 | 65,625.00 | 2,398,660.72 | 750,000.00 | 815,625.00 | 2,184,375.00 | " " " |

(1) Pro rata amount deducted from interest sold by each individual has been considered as a deduction from sale price instead of as an addition to cost. The total deducted amounted to $350,000.00, which was paid to the Tex-Penn Oil Co. to be used in paying off its liabilities. (This includes minority interests.)

(2) Amounts paid by M. L. Benedum & F. B. Parriott out of the proceeds of the sale of the 5/8 interest in the Duke-Knoles Pool to Kirkland, Lantz & Wrather included payments for Tex-Penn stock purchased as well as 6/16 of 5/8 interest in Duke-Knoles Pool purchased by Benedum & 1/16 of 5/8 interest purchased by Parriott.

(3) Since Benedum owned a 12/16 of 5/8 interest in Duke-Knoles Pool & Parriott a 4/16 of 5/8 interest, after they had acquired minority interests, Benedum should have received $9,000,000.00 cash & Parriott $3,000,000.00. Mr. Parriott has explained this difference by stating that Mr. Benedum agreed to accept $3,000,000.00 less than his proportionate part, to avoid having the deal fall through, since the underwriters had decided that $20,000,000.00 was all they could afford to pay for the 500,000 shares of Transcontinental stock subscribed for by them instead of $23,000,000.00 as originally agreed upon.

NOTE: The $153,125.00 shown as a reduction in sale price of minority interests in Exhibit A-1 has been deducted from the $350,000.00 deducted from the sale price of Benedum & Parriott, who actually received but $8,650,000.00. The figures are shown in the detail for the purpose of tieing minority sale price in with majority interests cost, & the entire amounts in with the contracts, letters, etc., & the net cash received.

## Respondent's Exhibit BB.

DISTRIBUTION OF ORIGINAL 2,000,000 SHARES OF TRANSCONTINENTAL OIL COMPANY STOCK AS SHOWN BY STOCK TRANSFER SHEETS OF CENTRAL UNION TRUST COMPANY, NEW YORK.

| *Certf. No.* | *To Whom Issued* | *No. of Shares* | | *Date Issued* |
|---|---|---|---|---|
| T.O. 1– 500 | Pritchitt & Company, 60 Broadway, New York City..... | 5,000 | 500– 10 shares each | 7-29-19 |
| 500– 900 | do | 10,000 | 400– 25 shares each | " |
| 901–1100 | do | 10,000 | 200– 50 shares each | " |
| T. 1–5250 | do | 525,000 | 5250–100 shares each | " |
| T.O. –1101 | Riverside Western Oil Co..... | 41,667 | 1 Certf. | " |
| T.O. –1102 | Riverside Eastern Oil Co..... | 41,666 | 1 Certf. | " |
| T.O. –1103 | Cancelled | | | |
| T.O. –1104 | Pittsburgh Texas Oil & Gas Company... | 158,833 | 1 Certf. | " |
| T.O. –1105 | M. L. Benedum & F. B. Parriott..... | 500,000 | 1 Certf. | " |
| T.O. –1106 | do | 507,834 | 1 Certf. | " |
| 5491–7490 | Pritchitt & Company. | 200,000 | 2000–100 shares each | 8-15-19 |
| Total shares originally issued..... | | 2,000,000 | | |

## Respondent's Exhibit CC.

Illustrative map showing location of properties acquired by Transcontinental Oil Company at the time of its organization. (Omitted.)

## Respondent's Exhibit DD.

General deed conveying properties of Pittsburgh-Texas Oil Company to Transcontinental Oil Company, dated July 29, 1919.

(Portion set out in the statement of evidence—see page 760, *ante*.)

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## Respondent's Exhibit EE.

General deed conveying properties of Riverside Eastern Oil Company to Transcontinental Oil Company, dated July 30, 1919.

(Portion set out in the statement of evidence—see page 760, *ante*.)

***Respondent's Exhibits Introduced at the Second Hearing:***

**Respondent's Exhibit AP.**

*Two Statements of Gross Production, etc.*

MID-CONTINENT PETROLEUM CORPORATION

STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

June, 1919—Well #1

| *Date 1919* | *Daily Gross Production* | *Gross Sales* | |
|---|---|---|---|
| | | *Barrels* | *Amount* |
| June 1 | ..... | | |
| 2 | ..... | | |
| 3 | ..... | | |
| 4 | ..... | | |
| 5 | ..... | | |
| 6 | ..... | | |
| 7 | ..... | | |
| 8 | ..... | | |
| 9 | ..... | | |
| 10 | ..... | | |
| 11 | ..... | | |
| 12 | ..... | | |
| 13 | ..... | | |
| 14 | ..... | | |
| 15 | ..... | | |
| 16 | ..... | | |
| 17 | ..... | | |
| 18 | ..... | | |
| 19 | ..... | | |
| 20 | ..... | | |
| 21 | ..... | | |
| 23 | ..... | | |
| 24 | ..... | | |
| 25 | 945.12 | | |
| 26 | 332.52 | | |
| 27 | 1,239.84 | | |
| 28 | 2,893.00 | | |
| 29 | 3,382.56 | | |
| 30 | 2,612.68 | | |
| | 11,405.72 | 9,517.92 | $21,415.32 |

Well #1 completed 6-25-19

LS-MT

*Respondent's Exhibit AP.*

## MID-CONTINENT PETROLEUM CORPORATION

### STATEMENT OF GROSS PRODUCTION AND GROSS CRUDE SALES FROM W. R. CARRUTH (20-A) LEASE IN ERATH COUNTY, TEXAS

July, 1919—Well #1 & 2.

| Date 1919 | Daily Gross Production | | Gross Sales Barrels | Gross Sales Amount |
|---|---|---|---|---|
| July 1 | 878.44 | | | |
| 2 | 3,595.46 | | | |
| 3 | 1,452.78 | | | |
| 4 | 2,500.00 | | | |
| 5 | 2,500.00 | [Respondent's Exhibit AP covers daily gross production down to and including July 11.] | | |
| 6 | 2,684.16 | | | |
| 7 | 1,972.28 | | | |
| 8 | 2,000.00 | | | |
| 9 | 2,057.36 | | | |
| 10 | 2,708.40 | | | |
| 11 | 2,401.60 | | | |
| *12* | *2,500.00* | [The figures as to daily gross production from July 12 to July 31, inclusive, art part of Petitioner's Exhibit X-1.] | | |
| *13* | *2,500.00* | | | |
| *14* | *2,500.00* | | | |
| *15* | *659.20* | | | |
| *16* | *1,180.36* | | | |
| *17* | *1,293.20* | | | |
| *18* | *1,760.16* | | | |
| *19* | *1,500.00* | | | |
| *20* | *1,500.00* | | | |
| *21* | *1,500.00* | | | |
| *22* | *1,500.00* | | | |
| *23* | *1,500.00* | | | |
| *24* | *1,500.00* | | | |
| *25* | *2,286.94* | | | |
| *26* | *2,753.04* | | | |
| *27* | *1,008.92* | | | |
| *28* | *1,734.68* | | | |
| *29* | *1,633.96* | | | |
| *30* | *1,500.00* | | | |
| *31* | *2,025.26* | | | |
| | *59,086.20* | | *58,895.06* | *$132,513.88* |

*Well #2 completed 7-10-19*

*LS-MT*

**Respondent's Exhibit AR.**

Gulf Production Company Engineering Department "sand cards"—approximately 750 identified by witness Logan.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit AQ for Identification.**

A purported balance sheet of Transcontinental Oil Company marked Respondent's Exhibit AQ for Identification: not admitted.

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**Respondent's Exhibit AS.**

Map constructed by witness Logan from base map of Gulf Production Company. Marked by witness with data obtained from Gulf sand cards, Exhibit AR.

(See folder of unprinted exhibits.)

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**Respondent's Exhibits AT-1 to AT-17.**

Seventeen maps showing lease purchases by seventeen oil companies, number of acres, date of acquisition and consideration paid therefor in each instance.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit AU.**

Reports of pipe line runs from Desdemona Field to December 31, 1919, from records of various pipe line companies.

(See folder of unprinted exhibits.)

**Respondent's Exhibit AV.**

Statement of the Pierce Pipe Line Company runs from the Ranger Field, supplied by Prairie-Sinclair Company, successors to Pierce.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit AW.**

(Withdrawn; not printed.)

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**Respondent's Exhibit AX.**

List of lease transactions within five miles of center of Desdemona Field taken from county records of Eastland, Comanche and Erath Counties, Texas, covering lease transactions from first leasing activity (January 1, 1918, to December, 1919, but not showing consideration therefor).

(See folder of unprinted exhibits.)

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**Respondent's Exhibit AY.**

Tabulation of market quotations on Transcontinental Oil Company common stock from June 28, 1919, to March 31, 1920, taken from the Wall Street Journal.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BC (1, 2 and 3).**

Three maps showing respectively surveys, lessees and fee owners in the Desdemona Field.

(See folder of unprinted exhibits.)

**Respondent's Exhibit BD.**

Map showing lease purchases prior to September, 1918, by "larger oil companies" in Desdemona within five-mile area from designated center of field, such purchases being shown in red and taken from Exhibits AT-1 to AT-17.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BE.**

Map showing drilling and sales of leases during September, 1918.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BF.**

Map showing drilling and sales of leases during October, 1918.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BG.**

Same as Exhibit BE, showing drilling and sales of leases during November, 1918.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BH.**

Same as Exhibit BE, showing drilling and sales of leases during December, 1918.

(See folder of unprinted exhibits.)

**Respondent's Exhibit BI.**

Cumulative map showing leases acquired and still held by larger companies as of December 31, 1918, and well completions to that date (area marked in brown to be disregarded).

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BJ.**

Same as Exhibit BE, showing drilling and sales of leases during January, 1919.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BK.**

Cumulative map showing drilling and lease sales to February 1, 1919 (area in brown to be disregarded).

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BL.**

Same as Exhibit BE, showing drilling and lease sales during February, 1919.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit BM.**

Cumulative map showing drilling and lease sales to March 1, 1919 (area in brown to be disregarded).

(See folder of unprinted exhibits.)

**Respondent's Exhibit BN.**

Same as Exhibit BE, showing drilling and lease sales for March, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BO.**

Cumulative map as of April 1, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BP.**

Same as Exhibit BE, showing drilling and lease sales for April, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BQ.**

Cumulative map as of May 1, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BR.**

Same as Exhibit BE, showing drilling and lease sales for May, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BS.**

Cumulative map as of June 1, 1919.
(See folder of unprinted exhibits.)

**Respondent's Exhibit BT.**

Same as Exhibit BE, showing drilling and lease sales for June, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BU.**

Cumulative map as of July 1, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BV.**

Same as Exhibit BE, showing drilling and lease sales for July, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BW.**

Cumulative map as of August 1, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BX.**

Map showing extent of drilling to June 2, 1919, wells being numbered in chronological order of completion.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit BY.**

Same as Exhibit BX, showing extent of drilling as at July 25th and July 31st; wells marked in green being those completed between July 25 and July 31, 1919.
(See folder of unprinted exhibits.)

**Respondent's Exhibit BZ.**

Same as Exhibit BE, showing drilling (no sale of leases) for August, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit CA.**

Cumulative map as of September 1, 1919, black area being leases owned by larger companies.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit CB.**

Same as Exhibit BE, showing drilling for September, 1918.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit CD.**

Cumulative map as of October 1, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit CE.**

Same as Exhibit BE, showing drilling for October, 1919.
(See folder of unprinted exhibits.)

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**Respondent's Exhibit CF.**

Cumulative map as of November 1, 1919.
(See folder of unprinted exhibits.)

**Respondent's Exhibit CG.**

Same as Exhibit BE, showing drilling and sales of leases during November, 1919, areas in red indicating leases owned by Hogg Creek Oil Company at the time of the purchase of the stock of that company by Magnolia Petroleum Company.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CH.**

Cumulative map as of December 31, 1919, showing drilling and lease sales.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CI.**

Same as Exhibit BE, showing drilling during December, 1919.

(See folder of unprinted exhibits.)

---

**Respondent's Exhibit CJ.**

Cumulative map as of December 31, 1919, showing drilling and lease sales.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CK.**

Map showing extent of drilling to November 24, 1919; area in red as in Exhibit CG above.

(See folder of unprinted exhibits.)

## Respondent's Exhibit CL.

Supplemental area of map adjacent to Tex-Penn leases on the north, showing drilling data to November 24, 1919; numerals opposite wells show chronological order of completion.

(See folder of unprinted exhibits.)

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## Respondent's Exhibit CM.

Supplemental map showing results of drilling in Desdemona town site area as of November 24, 1919; same as Exhibit CK with town site area enlarged.

(See folder of unprinted exhibits.)

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## Respondent's Exhibit CN.

Map showing Baumstock and S. A. & M. G. surveys; being approximate area shown by co-ordinates 31 and 32, M and N on Exhibit AS.

(See folder of unprinted exhibits.)

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## Respondent's Exhibit CO.

Tabular summaries of drilling in Desdemona Field, first page summarizing all tabulations, all data being taken from Gulf sand cards, Oil and Gas Journal (as to page 69 to the end of the tabulation), all pipe line data obtained from companies (see page 62 in particular).

(See folder of unprinted exhibits.)

**Respondent's Exhibit CP.**

Tabulations showing summary of production from leases based on pipe line runs (Exhibit AU; page 6 being a summary of the various tabulations).

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CQ.**

Supplement to Respondent's Exhibit CO, summarizing data thereon.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CR.**

Chronological list of well completions and five related maps with depth and initial production taken from Gulf Engineering sand cards; five supplemental maps marked CR-1 to CR-5.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CS.**

Monthly production from leases of the Hogg Creek Oil Company in which Magnolia Petroleum Company acquired all of the stock by purchase on November 24, 1919.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CT.**

Sand cards obtained from the Geological Department of the Gulf Production Company.

(See folder of unprinted exhibits.)

## Respondent's Exhibit CU.

Map showing grouping of Tex-Penn acreage by witness Powers and markings to indicate location of sales referred to in testimony.

(See folder of unprinted exhibits.)

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## Respondent's Exhibit CV.

Comparative statement showing data from various sources, i.e., Gulf Engineering Department sand cards, Gulf Geological Department sand cards and Petitioner's Exhibit 63.

(See folder of unprinted exhibits.)

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## Respondent's Exhibit FF.

THE STATE OF TEXAS }
COUNTY OF DALLAS. }

THIS CONTRACT between the HOG CREEK OIL COMPANY, a co-partnership composed of T. M. Dees, of Ellis County, Texas, B. J. Johnson and B. H. Turner of Cleburne, Johnson County, Texas, J. W. Caruth and J. B. McEntire of Eastland County, Texas, J. W. Potter and Morris Sass of Ardmore, Carter County, Oklahoma, and the other parties signing and ratifying this contract, acting herein by and through the said T. M. Dees, President and Manager of the Hog Creek Oil Company duly authorized hereto, Party of the First Part, and MAGNOLIA PETROLEUM COMPANY, a joint stock association having its domicile at Galveston, Texas, acting herein by and through E. R. Brown, Vice President and General Manager, duly authorized hereunto, Party of the Second Part, sometimes hereinafter

referred to as "Magnolia" for convenience, is made in consideration of the mutual obligations herein stated, and

WITNESSETH:

ARTICLE I

The Hog Creek Oil Company, being now the owner of the oil and gas leases hereinafter described, hereby assigns and obligates itself to transfer and convey by appropriate instruments satisfactory to Magnolia Petroleum Company unto John Sealy, E. R. Brown, R. Waverley Smith, George C. Greer and E. E. Plumly, as Trustees of Magnolia Petroleum Company, for its use and benefit to be held by said Trustees, their successors in trust and the survivor or survivors of them, subject to the Declaration of Trust of the Trustees of Magnolia Petroleum Company, an undivided one-half interest in and to those certain oil and gas leases owned by it, described below upon lands described as follows:

FIRST

120 acres of land situated in Comanche County, Texas, composed of two (2) tracts of land described as follows:

*a:* A tract of 70 acres taken off of the South end of the J. N. Duke tract of 240 acres in the H. T. & B. Survey, on which has been drilled an oil well by R. O. Harvey & Company known as the Kemp & Kell well, which said tract is to approach on its North side within a distance of not exceeding 500 feet of said well, and which as designated now approaches within approximately 470 feet of said well.

*b:* Another tract of 50 acres taken off of the South end of the S. T. Peak tract of 160 acres, on the J. W. Wilkerson Survey, which tract lies West of and adjoining G. W. Knowles tract and the L. C. Shearer 60 acre tract.

Said two (2) tracts of land are covered by oil and gas leases which are to be assigned, insofar as they cover said two tracts of land, to the Hog Creek Oil Company, it being the purpose here to describe the same 120 acres and the leases thereon to which the Hog Creek Oil Company is entitled under its contract with R. O. Harvey & Company.

SECOND

Oil and gas leases upon 3,000 acres situated in Eastland County, Texas, to be selected by Magnolia Petroleum Company from the following described leases, to-wit:

(Schedule containing description of twenty-four oil and gas leases is omitted.)

Should the 120 acres to which Hog Creek Oil Company is entitled be set aside to it by R. O. Harvey & Company in any different form or tracts than the two tracts described above (a and b), then the Hog Creek Oil Company shall assign to Magnolia half interest in the 120 acres and the lease thereon as set aside to the Hog Creek Oil Company, in lieu of the foregoing tracts a and b.

If Magnolia Petroleum Company is unable to procure from the list of leases described under this the Second subdivision of Article I the said three thousand (3,000) acres, with valid and merchantable title, or with such title as the Magnolia is willing to accept, then there shall be a deduction from the total amounts to be paid by Magnolia for the shortage an amount equal to the reasonable value of the shortage to be determined by an agreement between F. V. Faulkner, representing Magnolia, and T. M. Dees, representing the Hog Creek Oil Company; and in case they cannot agree, then by some third disinterested party to be selected by them.

In this connection, it is here stated merely for the purpose of throwing light on this question, if it arises, that

the average value per acre of said three thousand (3,000) acres of leases was agreed to be Three Hundred and Fifty ($350.00) Dollars, but the value of the shortage, if any, is to be determined according to location and all the circumstances surrounding the question.

ARTICLE II

The leases upon said 3,000 acres so to be selected by Magnolia Petroleum Company shall be valid and subsisting leases, under each of which rentals have been paid and accepted up to at least July 1, 1919, and the Hog Creek Oil Company is to convey to the said Trustees of Magnolia Petroleum Company for its use and benefit an undivided one-half interest in same under valid, merchantable titles to be approved by the attorneys of Magnolia Petroleum Company. Abstracts of title to all the leases in which such interest is to be conveyed to Magnolia Petroleum Company shall be furnished to the Magnolia Petroleum Company within 30 days from date hereof, and if there are any irregularities and defects in the titles to the tracts of land selected by Magnolia Petroleum Company, same shall, in each case, be pointed out in writing by Magnolia's attorneys within 10 days after the respective abstracts have been received, and the Hog Creek Oil Company shall at its expense diligently and in good faith exert its best efforts to remove said irregularities and defects as pointed out within 30 days from the time that the same are pointed out; failing to do which Magnolia Petroleum Company may, at the expense of the Hog Creek Oil Company, remove such irregularities and defects, but in such case the expense of so doing shall be reasonable and shall not be incurred without ten days previous notice to T. M. Dees as President of Hog Creek Oil Company, of the purpose to do so if the Hog Creek Oil Company does not remove the defects or irregularities pointed out.

No expense with respect to any of said leases in excess of $100.00 for the lease in question shall be incurred for the purpose of removing irregularities or defects of title by Magnolia Petroleum Company and imposed upon Hog Creek Oil Company, unless T. M. Dees, President, is consulted prior to incurring same and agrees thereto.

ARTICLE III

The conveyance to Magnolia Petroleum Company of its one-half interest in each of the leases conveyed, or to be conveyed to it, shall be subject to the terms, conditions and obligations of said leases respectively.

Magnolia Petroleum Company shall, as the manager of the operations upon the said leases in which it acquires a half interest, comply with the terms, conditions and obligations of said leases respectively at the joint and equal expense of Magnolia Petroleum Company and Hog Creek Oil Company.

Magnolia Petroleum Company obligates itself to begin promptly and as soon as practicable the drilling of a well upon said 120 acre lease, and four (4) additional wells upon some of the other tracts composing said 3,000 acres, in which it is to have a one-half interest, and continue said operations diligently until said wells are completed to the depth at which oil has been found in the "Kemp-Kell well" near said 120 acre tract, unless oil is found at a less depth; all of which wells are to be upon locations selected by Magnolia in accordance with its judgment.

ARTICLE IV

The expense of all development and operations on the said leases in which a one-half interest is conveyed or to be conveyed to Magnolia, including the expense of drilling said five (5) wells, shall be borne and paid equally by Magnolia Petroleum Company and Hog Creek Oil Com-

pany, and the production therefrom of oil and gas or other minerals after paying the royalties and expenses due shall belong equally to said parties—that is, one-half to Magnolia Petroleum Company and the other one-half to Hog Creek Oil Company.

However, it is understood that Magnolia Petroleum Company shall have the right to use without charge as much oil or gas produced from said leases for the carrying on of the operations thereon for the joint benefit of the parties hereto as may be necessary for that purpose, and as it may deem advisable to use.

The Magnolia agrees to advance for the Hog Creek Oil Company its one-half of the expense of drilling said five (5) wells, and collect back such advances, without interest, out of the money to be paid by Magnolia to the Hog Creek Oil Company under the terms of this contract as the same is due, until such advances are repaid. It being understood that no interest is to be charged against the Hog Creek Oil Company on account of said advances, nor any interest charged against Magnolia as respects payments to be made by it until after same are due.

If upon the completion of said five (5) wells no oil in paying quantities has been developed upon said premises, Magnolia shall not have the right to charge against the Hog Creek Oil Company any expense for drilling additional wells, unless the same are drilled with its consent. In case, however, of such difference—that is, in case the parties do not mutually agree that additional wells shall be drilled at their joint and equal expense, then either party shall have the right to drill on said leases in which Magnolia is conveyed a one-half interest an additional well or wells, advancing the expense therefor, and collecting back from the one-half interest of the other party in the production or output of said well, if any, the half of the expense of the other party, and thereafter the pro-

duction and output of said well to belong to said parties equally. It being understood that the party declining to participate in the drilling of such additional wells shall not be personally liable for any expense, and his share of the expense is to be collected back only in the event there is production, and from the production, if any.

ARTICLE V

Monthly statements shall be made up by Magnolia Petroleum Company and furnished to Hog Creek Oil Company on or before the 10th of each month, showing fully and correctly the production from and the expenses incurred in connection with each of said leases during the next preceding month. The production from said leases in which Magnolia has an interest shall be primarily charged with the duty of bearing the expense of developing and operating the same, and Magnolia shall have the right, upon making monthly statements, to deduct from the Hog Creek Oil Company's share of the proceeds in its hands, if any, of any oil or gas sold, such sum as may be required to pay its share of any expenses not previously paid.

ARTICLE VI

Magnolia shall make monthly settlements and payments to the Hog Creek Oil Company for such part of the latter's one-half of the production from said leases as may be sold to Magnolia or the proceeds of which may have come into its hands, making such settlements or payments on the 10th day of each month at the time it renders statements, as respects the oil and gas produced and marketed during the next preceding month.

*Respondent's Exhibit FF.*

## ARTICLE VII

Magnolia shall have sole and exclusive management of the development of and operations upon said leases in which it acquires a one-half interest, and shall, as aforesaid, develop and operate same at the joint and equal expense of the Hog Creek Oil Company and Magnolia.

It is agreed that no part of the rent paid by Magnolia Petroleum Company for its offices at Dallas shall be charged as a part of the expense of the development and operation of said leases. Only the actual expense incurred in the development and operation of said properties shall be charged against the same; it being understood that no expense of officers or overhead expense, except that actually and reasonably incident to said properties, shall be charged against the same; it being here agreed that Magnolia shall, as far as practicable, keep all the expenses connected with the operations on said leases separate from its other expenses.

## ARTICLE VIII

Magnolia agrees to pay to Hog Creek Oil Company, or its order, five percent (5%) of its one-half of all oil, gas or other minerals produced, saved and marketed from said leases until the sum of Seven Hundred Thousand Dollars ($700,000.00) has been paid, whereupon such payments shall cease. If, at the expiration of five (5) years from the date of this contract the total sum of Seven Hundred Thousand ($700,000.00) Dollars has not been thus paid, then Magnolia shall at the expiration of said five (5) years pay to the Hog Creek Oil Company, or its order, an additional sum equal to the difference between the total amount of all the five percent payments thus made during the five years and Seven Hundred Thousand Dollars ($700,000.00); whereupon, such payments shall cease. The payments referred to in this paragraph shall be made

monthly on the tenth (10th) day of each month, same to be equal to five percent (5%) of the market value measured by Magnolia's prevailing posted market price of Magnolia's one-half interest in the production of oil from said leases in which it has a one-half interest during the next preceding month, and five percent (5%) of the proceeds of Magnolia's one-half interest in all gas or other minerals produced from and marketed off of said premises during the next preceding month.

Magnolia agrees to advance against the payments to be made by it hereunder to the Hog Creek Oil Company sums not to exceed the aggregate amount of $50,000, same to be deducted in case of such advances from the payments to be made by it under the terms of this contract when and as due.

ARTICLE IX

It is distinctly understood that the Hog Creek Oil Company shall have the right to market its one-half interest in the oil belonging to it wherever and to whomsoever it may see fit, and Magnolia shall run the same into such pipe line or tanks as Hog Creek Oil Company may designate: it being understood that if run to tanks or pipe lines belonging to others that connection with Magnolia's pipe line or tankage must be provided by those to whom the oil is run at their expense.

However, it is agreed that Magnolia Petroleum Company shall have the privilege of purchasing the one-half interest in the oil of the Hog Creek Oil Company, and running the same into its line, by paying a price equal to that obtainable from others.

ARTICLE X

The Hog Creek Oil Company, through T. M. Dees, as President and Manager thereof, shall make separate assignments to Magnolia Petroleum Company of its one-half

(½) interest in said one hundred and twenty (120) acre lease, and in the leases composing said three thousand (3,000) acres, such assignments to be, by appropriate instruments conveying the interest to Magnolia, approved by the attorneys of Magnolia Petroleum Company. The said T. M. Dees, as President and Manager of the Hog Creek Oil Company, is hereby fully authorized by all of the other members of said co-partnership, for and on its and their behalf, to make said assignments or conveyances in accordance with the terms of this contract.

THIS CONTRACT is made by Magnolia Petroleum Company subject to its Declaration of Trust of its Trustees, of date April 24, 1911, recorded in Book 120, page 347, Deed Records of Jefferson County, Texas, reference to which is here made, under which any party contracting with Magnolia Petroleum Company must look alone to the property and assets of said Company for the payment and satisfaction and discharge of any obligation, demand, indebtedness or liability growing out of said contract, and there is to be no personal liability against the officers and stockholders of the Company.

IN TESTIMONY WHEREOF, witness our signatures this 18th day of September, A. D. 1918, executed in duplicate.

HOG CREEK OIL COMPANY,
By T. M. DEES
President & Manager

MAGNOLIA PETROLEUM COMPANY,
By E. R. BROWN
Vice-Pres. & Gen. Mgr.

Attest:
W. C. PROCTOR
Assistant Secretary

(Acknowledgment of Messrs. Dees and Brown omitted.)

*Respondent's Exhibit FF.*

The following members of the Hog Creek Oil Company hereby approve, ratify and confirm the foregoing contract between the Hog Creek Oil Company and Magnolia Petroleum Company under date of September 18th, 1918. Executed in duplicate on this the 18th day of September, A. D. 1918.

(The signatures of approximately sixty persons, with covering acknowledgments, are omitted.)

**Respondent's Exhibit KK-1.**

Map of Desdemona district, Tex-Penn leases marked in green, Hogg Creek Oil Company leases in red; map referred to by various respondent's witnesses in deposition testimony.

(See folder of unprinted exhibits.)

**Respondent's Exhibit KK-1-A.**

Map of Desdemona area referred to by certain respondent's witnesses in depositions.

(See folder of unprinted exhibits.)

**Respondent's Exhibit KK-1-B.**

Map of Desdemona area referred to by certain witnesses in depositions.

(See folder of unprinted exhibits.)

**Respondent's Exhibit AC.**

Letter of M. J. McLaughlin to E. B. Brown.

(Printed in full in the statement of evidence, at page 1456, *ante*.)

## Respondent's Exhibit AD.

Six-page memorandum identified by M. J. McLaughlin on deposition.

(Substance recited in the statement of evidence, at page 1458, *ante*. See folder of unprinted exhibits.)

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## Respondent's Exhibit CW.

| *Date Received* | *Banker* | *Amount* |
|---|---|---|
| 7-30-19 | Prichitt and Company | $ 3,000,000.00 |
| 7-30-19 | E. W. Clark and Company | 2,000,000.00 |
| 7-30-19 | " | 570,000.00 |
| 7-31-19 | Prichitt and Company | 4,500,000.00 |
| 8- 5-19 | " | 2,000,000.00 |
| 8- 7-19 | " | 300,000.00 |
| 9-16-19 | " | 2,000,000.00 |
| 9-24-19 | " | 1,000,000.00 |
| 9-25-19 | " | 500,000.00 |
| 10-14-19 | " | 500,000.00 |
| 10-31-19 | " | 500,000.00 |
| 11-21-19 | " | 500,000.00 |
| 12-15-19 | " | 500,000.00 |
| 1-14-20 | " | 500,000.00 |
| 1-31-20 | " | 125,000.00 |
| " | E. W. Clark and Company | 62,500.00 |
| " | " | 540,000.00 |
| 2- 6-20 | " | 50,000.00 |
| 2-10-20 | Prichitt and Company | 50,000.00 |
| 2-13-20 | E. W. Clark and Company | 50,000.00 |
| 2-16-20 | Prichitt and Company | 50,000.00 |
| 2-20-20 | E. W. Clark and Company | 50,000.00 |
| 2-24-20 | Prichitt and Company | 50,000.00 |
| 2-27-20 | E. W. Clark and Company | 25,000.00 |
| 2-28-20 | Prichitt and Company | 75,000.00 |
| 3- 5-20 | E. W. Clark and Company | 25,000.00 |
| " | Prichitt and Company | 75,000.00 |
| 3-11-20 | " | 50,000.00 |
| " | E. W. Clark and Company | 25,000.00 |
| 3-15-20 | Prichitt and Company | 50,000.00 |
| 3-17-20 | B. Y. Frost and Company | 205,950.00 |
| 3-18-20 | E. W. Clark and Company | 25,000.00 |
| 3-22-20 | Prichitt and Company | 50,000.00 |
| 3-23-20 | E. W. Clark and Company | 100,000.00 |
| 3-29-20 | Prichitt and Company | 55,000.00 |
| 3-31-20 | E. W. Clark and Company | 47,500.00 |
| 4-23-20 | B. Y. Frost and Company | 19,050.00 |
| | TOTAL | $20,225,000.00 |

**Respondent's Exhibit MM.**

Assignment dated December 31, 1918, by Hogg Creek Company to Magnolia Petroleum Company.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit NN.**

Agreement dated December 31, 1918, between Hogg Creek Oil Company and Magnolia Petroleum Company relative to leases (signed under Exhibit MM) involved in litigation.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CZ.**

Photostatic enlargement of a map from page 6 of pamphlet entitled "Professional Paper 129—A Short Contribution to General Geology, 1921," by David White, Chief Geologist, U. S. Geological Survey.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit CY.**

Pamphlet entitled "Petroleum in 1919 to 1921," by G. B. Richardson, U. S. Department of Interior, Geological Survey.

(Portion admitted recited in the statement of evidence, at pages 1473-1474, *ante*.)

**Respondent's Exhibit DA.**

Contour map of the Desdemona field prepared by witness Woodruff to show elevation above sea level (drawn on base map Exhibit AS).

(See folder of unprinted exhibits.)

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**Respondent's Exhibit DB.**

Map showing wells drilled prior to August 1, 1919, with markings and classifications as prepared by the witness Woodruff.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit DC.**

Map showing grouping of Tex-Penn lease acreage by witness Woodruff. Portions colored dark green indicate areas designated by witness as "proven for production," and light green as to areas designated by witness as "possible for production."

(See folder of unprinted exhibits.)

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**Respondent's Exhibit DE.**

Witness Woodruff's tabulation showing "proven" acreage of the Tex-Penn leases.

(See folder of unprinted exhibits.)

## Respondent's Exhibit DF.

COMPUTATION SHOWING WOODRUFF METHOD OF VALUATION

Table showing expected production from Tex-Penn leases in the Duke-Knoles Pool as determined from the production of the six wells on these leases according to data presented on Exhibit 30 and production from the Magnolia's Duke No. 1 within the area of this block as shown from Exhibit CP, page 3:

| | | |
|---|---|---|
| Production of Tex-Penn, Duke-Knoles six wells to Aug. 1, 1919, from Exhibit 30 | 421,140.23 bbls. | |
| Production from Magnolia Duke No. 1 to Aug. 1, 1919, from Exhibit CP, page 3 | 88,548.29 " | |
| Total of the seven wells | 509,688.52 " | |
| Average of each one of the seven wells is 1/7 of total | 72,812.64 " | |
| If there are 10 acres per well, each acre would produce 1/10 of the 72,812.64 or | 7,281.26 " | |
| If one acre produces 7,281.26, the 2,520 proven acres should produce 2,520 times 7,281.26—equals | 18,348,775 bbls. | |
| The price per barrel of oil per barrel was $2.25. | | |
| Therefore, 18,348,775.00 barrels at $2.25 per barrel equals. | | $41,284,743.00 |
| The gross returns—$41,284,743.00 less 1/8 royalty—equals. | | $36,124,150.00 |
| The operating cost is placed at 25¢ per barrel. | | |
| At this rate 18,348,775.00 barrels cost to produce | | $ 4,587,193.00 |
| The drilling cost of each well is placed at $37,500. | | |
| It has been estimated that there should be 125 wells on the property. | | |
| 125 wells at $37,500.00 each equals | | 4,687,500.00 |
| Total of operating and drilling costs | | $ 9,274,693.00 |
| The gross returns to operator as above, namely, $36,124,150.00 less $9,274,693.00, equals net return of on the basis of 10 acres drained by wells already drilled. | | $26,849,457.00 |
| One-half of net return | | $13,424,728.00 |

Table showing expected production from Tex-Penn leases in the Duke-Knoles Pool as determined from the production of the six wells on these leases according to data presented on Exhibit 30 and production from the

*Respondent's Exhibit DF.*

**Magnolia's Duke No. 1 within the area of this block as shown from Exhibit CP, page 3:**

| | |
|---|---|
| Production of Tex-Penn, Duke-Knoles six wells to Aug. 1, 1919, from Exhibit 30 | 421,140.23 bbls. |
| Production from Magnolia Duke No. 1 to Aug. 1, 1919, from Exhibit CP, page 3 | 88,548.29 " |
| Total of the seven wells | 509,688.52 " |
| Average of each one of the seven wells is 1/7 of total | 72,812.64 " |
| If there are 8 acres per well, each acre would produce 1/8 of the 72,812.64 or | 9,101.58 " |
| If one acre produces 9,101.58, the 2,520 proven acres should produce 2520 times 9,101.58—equals | 22,935,981 bbls. |
| The price per barrel of oil per barrel was $2.25. | |
| Therefore, 22,935,981.00 barrels at $2.25 a barrel equals | $51,605,957.00 |
| The gross returns—$51,605,957.00 less 1/8 royalty—equals | $45,155,212.00 |
| The operating cost is placed at 25¢ per barrel. At this rate 22,935,981.00 barrels cost to produce | $ 5,733,995.00 |
| Drilling cost of each well is placed at $37,500.00. It has been estimated that there should be 125 wells on the property. 125 wells at $37,500.00 each equals | 4,687,500.00 |
| Total of operating and drilling cost | $10,421,495.00 |
| The gross returns to the operator as above—$45,155,212.00 less $10,421,496.00—equals net return of on the basis of 8 acres drained by wells already drilled. | $34,733,717.00 |
| One-half of net returns | $17,366,858.00 |

## Respondent's Exhibit DH.

Map used by witness Matson to depict Tex-Penn lease acreage designated as "proven" area and "possible producing" area as designated by him in the Tex-Penn lease acreage in Desdemona.

(See folder of unprinted exhibits.)

## Respondent's Exhibit DI.

Tabulation showing "proven" acreage as computed by Matson on Tex-Penn Desdemona lease acreage.

(See folder of unprinted exhibits.)

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## Respondent's Exhibit DJ.

Tabulation showing method by which witness Matson reached his valuation.

(See folder of unprinted exhibits.)

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## Respondent's Exhibit DK.

G. W. KNOLES

3 WELLS ON TEX-PENN DUKE-KNOLES LEASES

| | *Cumulative Production: Pet. Exhibit 74* | *Total Initial Barrels* | *Barrels Produced per Barrel of Initial* |
|---|---|---|---|
| Pet. Exhibit 74..... | 590,625 | 9,430 | 63 |
| Pet. Exhibit 63..... | " | 6,430 | 92 |
| Gulf Geological Cards..... | " | 4,076 | 144 |
| Gulf Engineering Cards..... | " | 3,500 | 168 |

Profitable well computation at $2.25 per bbl. of oil, 22,000 bbls. gross, gives 19,250 net to the 7/8 working interest. Gross value of 19,250 bbls. at $2.25 per bbl. is $43,312.50.

| | |
|---|---|
| Cost of operation at 25¢ per bbl. for 22,000 bbls. is..... | $ 5,500.00 |
| Drilling cost, including equipment..... | 37,500.00 |
| Total cost of operation and drilling..... | $43,000.00 |

Assuming that the following barrels produced per barrel of initial governs, the following initial is necessary for a well to pay out:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Pet. Exh. 74 | 63 | bbls. | divided | into | 22,000 | bbls. | equals | 365 bbls. |
| " " 63 | 92 | " | " | " | " | " | " | 239 " |
| Geol. Cards | 144 | " | " | " | " | " | " | 153 " |
| Eng. Cards | 168 | " | " | " | " | " | " | 131 " |

Assuming a price of $2.00 per bbl., the following figures govern, since it will require a 25,000 bbl. well to pay out:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Pet. Exh. 74 | 63 | bbls. | divided | into | 25,000 | bbls. | equals | 397 bbls. |
| " " 63 | 92 | " | " | " | " | " | " | 272 " |
| Geol. Cards | 144 | " | " | " | " | " | " | 174 " |
| Eng. Cards | 168 | " | " | " | " | " | " | 149 " |

**Respondent's Exhibit DL.**

Contour map of the Desdemona Field prepared by witness Ravicz to show elevation above sea level (drawn on base map Exhibit AS).

(See folder of unprinted exhibits.)

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**Respondent's Exhibit DM.**

Chart showing production of crude oil, stocks of oil on hand and value of oil at wells from 1910 to 1919 prepared by witness Merriman.

(See folder of unprinted exhibits.)

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**Respondent's Exhibit DN.**

Chart prepared by witness Merriman showing crude oil supply and relative price indexes, including days of supply on hand at end of each year, wholesale commodity price index and Oklahoma-Kansas crude oil price index from 1913 to 1918 (based on figures from U. S. Geological Survey in U. S. Bureau of Labor Statistics).

(See folder of unprinted exhibits.)

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**Respondent's Exhibit DO.**

Chart prepared by witness Merriman showing oil refineries' statistics, including value of refined products and investment in refineries from 1899 to 1919 (taken from U. S. Census Reports; see folder of unprinted exhibits.)

## Respondent's Exhibit DP.

Chart prepared by witness Merriman showing natural gas production in the United States from 1915 to 1919, charted according to percentage of 1915 production (based on figures from U. S. Geological Survey).

(See folder of unprinted exhibits.)

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## Respondent's Exhibit DQ.

Tabulation of conveyances, certified copy of deeds showing certain lease transactions and consideration therefor, testified to by various witnesses for respondent.

(See folder of unprinted exhibits.)

## Stipulation Regarding Statement of Evidence and Exhibits.

(Filed October 23, 1935.)

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

| | |
|---|---|
| TEX-PENN OIL COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. | No. 5979 October Term, 1935. (B.T.A. No. 11539) |

IT IS HEREBY STIPULATED by and between the parties through their respective counsel that the foregoing statement of evidence in narrative form, the foregoing printed exhibits and the exhibits therein recited as contained in the folder of unprinted exhibits is a statement of all of the material evidence adduced at the hearing before the United States Board of Tax Appeals and the same is approved by the undersigned as attorney for the petitioner on review and by the undersigned Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue, respondent on review.

Dated, October 23, 1935.

J. C. ADAMS,
Attorney for Petitioner on Review.

ROBERT H. JACKSON,
Assistant General Counsel for the
Bureau of Internal Revenue.

## Approval.

The foregoing statement of evidence in narrative form, the foregoing printed exhibits and the exhibits therein recited as contained in the folder of unprinted exhibits is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this day of November, 1935.

C. ROGERS ARUNDELL,
Member, United States Board of
Tax Appeals.

## Stipulation for Transmission of Certain Exhibits Without Printing.

(Filed October 23, 1935.)

IN THE

UNITED STATES BOARD OF TAX APPEALS.

| | |
|---|---|
| TEX-PENN OIL COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. | Docket No. 11539 |

WHEREAS, the above-entitled appeal, pursuant to stipulation of the parties duly filed and approved by the Board, was consolidated for hearing with two appeals then pending before the Board, namely, *M. L. Benedum* v. *Commissioner*, Docket No. 30990, and *F. B. Parriott* v. *Commissioner*, Docket No. 30989, which stipulation and order of the Board further provided that all testimony might be offered at the hearing in the appeal of *M. L. Benedum* v. *Commissioner*, and that all such testimony so offered and admitted or rejected in such appeal should be deemed to have been offered and admitted or rejected in each of the other two appeals as well, so far as material under the issues in each respectively, and

WHEREAS, it is necessary that certain exhibits should be inspected by the United States Circuit Court of Appeals for the Third Circuit in connection with the record in the above cause,

IT IS, THEREFORE, stpulated and agreed by and between the parties in the above-entitled cause, through their respective attorneys, that in accordance with the provisions of Rule 14, Section 5 of the Rules of the United States

Circuit Court of Appeals for the Third Circuit, the following numbered and lettered exhibits be transmitted by the Clerk of the United States Board of Tax Appeals to said Court, in connection with the transcript and placed in the custody of the Clerk of said Court:

(a) Petitioner's Exhibits Nos. 60, 61, 64, 65, 66, 67, 68, 70, 71, 73, 75, 76, 79, 81, 81A, 85, 86, 87, 88, 89, 101, 103, 104, 105, 106, 107, 108.

(b) Respondent's Exhibits Nos. C, D, F, S, T, U, V, W, X, Y, Z, AA, AR, AS, AT 1 to AT 17 inclusive, AU, AV, AX, AY, BC-1, 2 and 3, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, BZ, CA, CB, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, CN, CO, CP, CQ, CR, CS, CT, CU, CV, KK-1, KK-1-A, KK-1-B, AD, MM, NN, CZ, DA, DB, DC, DE, DH, DI, DJ, DL, DM, DN, DO, DP, DQ.

Dated, October 23, 1935.

J. C. ADAMS,
Counsel for Petitioner.

ROBERT H. JACKSON,
Counsel for Respondent.

## Praecipe.

(Filed November 11, 1935.)

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

| | |
|---|---|
| TEX-PENN OIL COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. | Docket No. 11539 |

*To the Clerk of the United States Board of Tax Appeals:*

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Third Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the Petition for Review by the said Circuit Court of Appeals for the Third Circuit, heretofore filed by the above-named petitioner:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board:

(a) Petition.

(b) Answer.

(c) Motion filed March 8, 1928, to amend answer, with order thereon.

(d) Motion to limit hearing to issues defined in (a) and (b) of Rule 62, filed by General Counsel, with order thereon.

(e) Motion that Appeal of Benedum, Docket No. 30990, and Appeal of Parriott, Docket No. 30989,

be consolidated with the Appeal of Tex-Penn Oil Company.

(f) Amended petition, including a copy of the deficiency letter and statement attached thereto as an exhibit.

(g) Answer to amended petition.

(h) Motion to make answer more definite and certain.

(i) Order granting motion to make answer more definite and certain.

(j) Amended answer to amended petition.

3. Amended motion to confine hearing in the first instance, filed December 10, 1931.

4. Order filed December 10, 1931, granting motion confining the hearing in the first instance.

5. Order entered April 4, 1932, restoring proceedings to the day calendar for further hearing on all questions in dispute under issues as raised by the pleadings.

6. Recomputation of deficiency filed by General Counsel on February 2, 1933.

7. Findings of fact and opinion promulgated August 8, 1933.

8. Motion for additional findings of fact filed by General Counsel September 16, 1933.

9. Motion for leave to withdraw motion of September 16, 1933, filed by General Counsel and order granting same.

10. Petitioner's exceptions to certain of the Board's findings of fact filed February 9, 1935.

11. Motion to adopt several findings and conclusions set forth in "Petitioner's Proposed Findings of Fact" and to allow petitioner exceptions to any refusals, filed February 9, 1935.

12. Petitioner's withdrawal of assignments of error relating to Special Assessment, filed April 29, 1935.

13. Order, dated May 9, 1935, denying petitioner's motion of February 9, 1935, for additional findings of fact.

14. Notice of settlement filed by General Counsel.

15. Notice under Rule 50 of hearing on respondent's proposed computation.

16. Computation of deficiency as submitted by respondent on June 27, 1935.

17. Petitioner's objections to respondent's computation, with annexed counter-computation by petitioner, filed July 13, 1935.

18. Respondent's request and motion for additional findings filed by General Counsel July 17, 1935, with order denying such motion.

19. The decision and order of redetermination made and entered herein on the 18th day of July, 1935.

20. Petition for review by the United States Circuit Court of Appeals for the Third Circuit with assignments of error filed by petitioner October 15, 1935.

*Praecipe.*

21. Notice of filing of petition for review and acceptance of service, filed October 15, 1935.

22. Statement of Evidence.

23. Stipulation of the parties upon settlement of the Statement of Evidence.

24. Board's approval and settlement of the Statement of Evidence.

25. Stipulation for Transmission of Certain Exhibits Without Printing and the several exhibits therein enumerated and directed to be transmitted to the Circuit Court of Appeals, the latter to be designated "Folder of Unprinted Exhibits."

26. This præcipe for record.

27. Notice of filing this præcipe for record and the admission of service thereof.

WESTON VERNON, JR.,
Attorney for Petitioner on Review.

Service of a copy of this præcipe
is hereby admitted this 18th day
of November, 1935.

(S) ROBERT H. JACKSON,
Asst. General Counsel,
Bureau of Internal Revenue.

## Notice of Filing Praecipe.

(Filed November 11, 1935.)

UNITED STATES BOARD OF TAX APPEALS,

WASHINGTON, D. C.

| | |
|---|---|
| TEX-PENN OIL COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. | Docket No. 11539 |

To: ROBERT H. JACKSON, Esq.,
Assistant General Counsel for the
Bureau of Internal Revenue,
Internal Revenue Building,
Washington, D. C.

PLEASE TAKE NOTICE that on the day of November, 1935, the undersigned, Attorney for Tex-Penn Oil Company, the petitioner in the above-entitled proceeding, has filed with the Clerk of the United States Board of Tax Appeals a Praecipe for record, a copy of which is annexed hereto.

Dated, November 11, 1935.

WESTON VERNON, JR.,
Attorney for Petitioner.

Receipt of the foregoing notice of filing the Præcipe for record and service of a copy of the Præcipe herein mentioned is acknowledged this day of November, 1935.

(s) ROBERT H. JACKSON,
Assistant General Counsel
for the Bureau of Internal Revenue,
Attorney for Respondent.

## Certificate.

UNITED STATES BOARD OF TAX APPEALS,

WASHINGTON, D. C.

| | |
|---|---|
| TEX-PENN OIL COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. | Docket No. 11539 |

I, B. D. GAMBLE, Clerk of the United States Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 2032, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Præcipe in the appeal as above numbered and entitled.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals at Washington in the District of Columbia this day of December, 1935.

B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.